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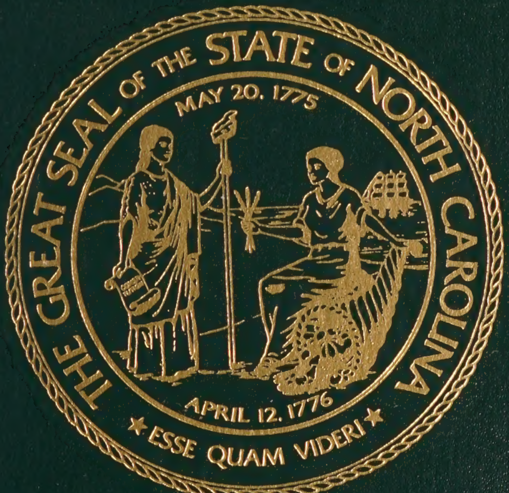
OF
NORTH CAROLINA

ANNOTATED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GENERAL STATUTES OF NORTH CAROLINA

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Volume 2

Chapters 105A to 168A
NC Constitution
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ENACTED BY THE GENERAL ASSEMBLY

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Preface

This Volume contains the general laws of a permanent nature enacted by the General Assembly at the 2006 Regular Session, which are within Chapters 2006-1 through 2006-264, and brings to date the annotations included therein.

A majority of the Session Laws are made effective upon becoming law, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 60 days after the adjournment of the session" in which passed.

For detailed research on any subject, both within this volume and the General Statutes as a whole, see the General Index to the General Statutes.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, selected opinions which construe a specific statute are cited in the annotations to that statute. For a copy of an opinion or of its headnotes, write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

This recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any suggestions they may have for improving the General Statutes to the Department, or to LexisNexis, Charlottesville, Virginia.

Roy Cooper
Attorney General

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 2006 Regular Session affecting Chapters 2006-1 through 2006-264.

Annotations:

This publication contains annotations taken from decisions of the North Carolina Supreme Court, decisions of the North Carolina Court of Appeals, and decisions of the appropriate federal courts posted on LEXIS through September 22, 2006. These cases will be printed in the following reporters:

South Eastern Reporter 2nd Series.
Federal Reporter 3rd Series.
Federal Supplement 2nd Series.
Federal Rules Decisions.
Bankruptcy Reports.
Supreme Court Reporter.

Additionally, annotations have been taken from the following sources:

North Carolina Law Review.
Wake Forest Law Review.
Campbell Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1 of the General Statues. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 of the General Statutes for the complete User's Guide.

Abbreviations

(The abbreviations below are those found in the General Statutes that refer to prior codes.)

P.R.	Potter's Revisal (1821,1827)
R.S.	Revised Statutes (1837)
R.C.	Revised Code (1854)
C.C.P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C.S.	Consolidated Statutes (1919, 1924)

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

November 2006

I, Roy Cooper, Attorney General of North Carolina, do hereby certify that the foregoing 2006 Interim Supplement to the General Statutes of North Carolina was prepared and published by LexisNexis under the supervision of the Department of Justice of the State of North Carolina.

Roy Cooper
Attorney General of North Carolina

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Chapter 105A.

Setoff Debt Collection Act.

Article 1.

In General.

Sec.
105A-2. Definitions.

ARTICLE 1.

In General.

§ 105A-2. Definitions.

The following definitions apply in this Chapter:

- (1) Claimant agency. — Either of the following:
  - a. A State agency.
  - b. A local agency acting through a clearinghouse or an organization pursuant to G.S. 105A-3(b1).
- (2) Debt. — Any of the following:
  - a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.
  - b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.
  - c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.
  - d. Reserved for future codification purposes.
  - e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:
    - 1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.
    - 2. The State-County Special Assistance for Adults Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
    - 3. A successor program of one of these programs.
- (3) Debtor. — An individual who owes a debt.
- (4) Department. — The Department of Revenue.
- (5) Reserved.
- (6) Local agency. — Any of the following:
  - a. A county, to the extent it is not considered a State agency.
  - b. A municipality.
  - c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

  d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.
  e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes or other authorizing legislation.
  f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
  g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

(7) Net proceeds collected. — Gross proceeds collected through setoff against a debtor's refund minus the collection assistance fees provided in G.S. 105A-13.

(8) Refund. — An individual's North Carolina income tax refund.

(9) State agency. — Any of the following:
  a. A unit of the executive, legislative, or judicial branch of State government.
  b. A local agency, to the extent it administers a program supervised by the Department of Health and Human Services or it operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act. (1979, c. 801, s. 94; 1981, c. 724; 1983, c. 922, s. 21.11; 1983 (Reg. Sess., 1984), c. 1034, s. 10.2; 1985, c. 589, s. 33; c. 649, s. 6; c. 747; 1985 (Reg. Sess., 1986), c. 1014, s. 63(e), (f); 1987, c. 564, s. 18; c. 578, ss. 1, 2; c. 856, s. 12; 1989, c. 141, s. 2; c. 539, s. 1; c. 699; c. 727, s. 30; c. 770, s. 75.2; 1993 (Reg. Sess., 1994), c. 735, s. 1; 1995, c. 227, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 24.30(d); 1997-433, ss. 3.3, 11.3; 1997-443, ss. 11A.118(a), 11A.119(a), 11A.122, 12.26; 1997-490, s. 1; 1998-17, s. 1; 1998-98, s. 38(a); 2002-156, s. 5(a); 2003-333, s. 1; 2004-138, s. 1; 2005-326, s. 1; 2006-259, s. 20.)

Effect of Amendments. —
Session Laws 2006-259, s. 20, effective August 23, 2006, added "or other authorizing legislation" to the end of subdivision (6)e.

Chapter 106.

Agriculture.

Article 4G.

Official Cotton Growers' Organization.

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106-65.88. Referendum; assessments.

Article 38A.

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106-451.19. Contents of receipts.

Article 39.

Leaf Tobacco Warehouses.

106-452. [Repealed.]

Article 50.

Promotion of Use and Sale of Agricultural Products.

106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.

Article 52.

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Article 68A.

North Carolina Dairy Stabilization and Growth Program.

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ARTICLE 4G.

Official Cotton Growers' Organization.

§ 106-65.88. Referendum; assessments.

(a) At the request of the certified organization, the Board shall authorize a referendum among cotton growers upon the question of whether an assessment shall be levied upon cotton growers in the State to offset, in whole or in part, the cost of boll weevil or other cotton pest eradication and suppression programs authorized by this Article or by any other law of this State.

(b) The assessment levied under this Article shall be based upon the number of acres of cotton planted. The amount of the assessment, the period of time for which it shall be levied, and the geographical area to be covered by the assessment shall be determined by the Board.

(c) All affected cotton growers shall be entitled to vote in any such referendum and the Board shall determine any questions of eligibility to vote.

(d) If at least two-thirds of those voting vote in favor of the assessment, then the assessment shall be collected by the Department from the affected cotton growers.

(e) The assessments collected by the Department under this Article shall be promptly remitted to the certified organization under such terms and conditions as the Commissioner shall deem necessary to ensure that such assessments are used in a sound program of eradication or suppression of the boll weevil or other cotton pests.

(f) The certified organization shall provide to the Department an annual audit of its accounts performed by a certified public accountant.

(g) **(Effective until July 1, 2007)** For the purposes of the Executive Budget Act, G.S. 143-1 et seq., the assessments collected by the Department under this Article shall not be "State funds."

(g) **(Effective July 1, 2007)** For the purposes of the State Budget Act, Chapter 143C of the General Statutes, the assessments collected by the Department under this Article shall not be "State funds". (1983, c. 136, s. 5; 2006-203, s. 25.)

Subsection (g) Set Out Twice. — The first version of subsection (g) set out above is effective until July 1, 2007. The second version of subsection (g) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 25, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act, Chapter 143C of the General Statutes" for "Executive Budget Act, G.S. 143-1 et seq." in subsection (g).

Article 38A.

Cotton Warehouse Act.

§ 106-451.19. Contents of receipts.

Every receipt issued for cotton stored in a warehouse licensed under this Article shall contain the information required under the United States Warehouse Act, 7 U.S.C. § 214, et seq., and the regulations promulgated thereunder. (1987, c. 840, s. 1; 2006-112, s. 57.)

Editor's Note. — Session Laws 2006-112, s. 60, provides: "A document of title issued or a bailment that arises before the effective date of this act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute."

Effect of Amendments. — Session Laws 2006-112, s. 57, effective October 1, 2006, rewrote the section.

Article 39.

Leaf Tobacco Warehouses.

§ 106-452: Repealed by Session Laws 2006-162, s. 29, effective July 24, 2006.

Article 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.

With respect to any referendum conducted under the provisions of this Article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least 30 days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this Article shall exceed one half of one percent (½ of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on the volume of milk sold not to exceed one percent (1%) of the statewide blend price paid to all North Carolina producers during the previous calendar year for three and one-half percent (3.5%) milk as computed by the United States Department of Agriculture. Provided further, that the assessment authorized by this Article and collected by the Commissioner of Agriculture to be paid to the North Carolina Yam Commission, Inc., or other duly certified agencies entitled thereto for research, marketing and promotional programs related to yams or sweet potatoes may be levied at a rate not to exceed two percent (2%) of the value of the year's production of that agricultural commodity grown by any farmer, producer or grower included in the group to which the referendum is submitted, and when authorized by two-thirds or more of the farmers, producers or growers in the area in which the referendum is conducted, the rate of the assessment may remain in effect for the length of time provided in the referendum. Provided further, that the assessment authorized by this Article on peanuts may not exceed two percent (2%) of the price paid to the producer. (1947, c. 1018, s. 8; 1967, c. 774, s. 1; c. 1268; 1981, c. 216, s. 1; 1983, c. 246, s. 1; 1997-371, s. 1; 2004-199, s. 27(e); 2006-264, s. 24.)

Effect of Amendments. — Session Laws 2004-199, s. 27(e), as amended by Session Laws 2006-264, s. 24, effective August 17, 2004, substituted "United States Department of Agriculture" for "North Carolina Milk Commission" at the end of the second sentence.

Article 52.

Agricultural Development.

§ 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

(1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
(2) The planting and production of trees and timber.
(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
(4) Aquaculture as defined in G.S. 106-758.
(5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
(6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products,

agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm. (1991, c. 81, s. 1; 2005-390, s. 18; 2006-255, s. 6.)

Effect of Amendments. — Session Laws 2006-255, s. 6, effective August 23, 2006, deleted "deer, elk" following "poultry" in subdivision (3).

ARTICLE 61.

Agricultural Development and Preservation of Farmland.

Part 4. Agricultural Conservation Easements.

§ 106-744. Purchase of agricultural conservation easements; establishment of North Carolina Agricultural Development and Farmland Preservaton Trust Fund and Advisory Committee.

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by G.S. 106-737.

(b) For purposes of this section, "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

(1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations;

(1a) May permit agricultural uses as necessary to promote agricultural development associated with the family farm; and

(2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a "North Carolina Agricultural Development and Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or funding programs that promote the development and sustainability of farming and assist in the transition of existing farms to new farm families, or monies transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for any of the following:

(1) The purchase of agricultural conservation easements, including transaction costs.

(2) Public and private enterprise programs that will promote profitable and sustainable family farms through assistance to farmers in developing and implementing plans for the production of food, fiber, and value-added products, agritourism activities, marketing and sales of agricultural products produced on the farm, and other agriculturally related business activities.

(3) To fund conservation agreements to bring into or maintain farmland in active production of food, fiber, and other agricultural products.

(4) The costs of administering the program under this Article, including the cost of staff and staff support.

(c1) The Commissioner shall distribute Trust Fund monies for such purchases, including transaction costs, as follows:

(1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.

(2) To counties according to the match requirements under subsection (c2) of this section.

(c2) A county that is a development tier two or three county, as these tiers are defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is a development tier one county, as defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c3) The Commissioner of Agriculture shall adopt rules governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement.

(e) As used in subsection (c2) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

(1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.

(2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.

(3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.

(4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.

(5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739.

(g) There is established the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee. The Advisory Committee shall be administratively located within the Department of Agriculture and Consumer Services and shall advise the Commissioner on the prioritization and allocation of funds, the development of criteria for awarding funds, program planning, and other areas where monies from the Trust Fund can be used to promote the growth and development of family farms in North Carolina. The Advisory Committee shall be composed of 19 members as follows:

(1) The Commissioner of Agriculture or the Commissioner's designee, who shall serve as the Chair of the Advisory Committee.
(2) The Secretary of Commerce or the Secretary's designee.
(3) The Secretary of Environment and Natural Resources or the Secretary's designee.
(4) Three practicing farmers, one appointed by the Governor, one appointed by the President Pro Tempore of the Senate, and one appointed by the Speaker of the House of Representatives.
(5) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.
(6) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.
(7) The Executive Director of the North Carolina Rural Economic Development Center, Inc., or the Executive Director's designee.
(8) The Executive Director of the Conservation Trust for North Carolina or the Executive Director's designee.
(9) The Executive Director of the North Carolina Farm Transition Network or the Executive Director's designee.
(10) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
(11) The Director of the Southeast Regional Office of the American Farmland Trust or the Director's designee.
(12) The Executive Director of the North Carolina Agribusiness Council or the Executive Director's designee.
(13) The President of the North Carolina State Grange or the President's designee.
(14) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
(15) The President of the North Carolina Black Farmers and Agriculturalists Association or the President's designee.
(16) The President of the North Carolina Forestry Association or the President's designee.
(17) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(h) The Advisory Committee shall meet at least quarterly. The Department of Agriculture and Consumer Services shall provide the Advisory Committee with administrative and secretarial staff. Members of the Advisory Committee shall be entitled to per diem pursuant to G.S. 138-5 or G.S. 138-6, as appropriate. The Advisory Committee shall make recommendations to the Commissioner on the distribution of monies from the Trust Fund at least annually. The Commissioner shall take the recommendations of the Advisory Committee into consideration in making decisions on the distribution of monies from the Trust Fund.

(i) The Advisory Committee shall report no later than May 1 of each year to the Joint Legislative Commission on Governmental Operations and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources regarding the activities of the Advisory Committee, the agriculture easements purchased, and agricultural projects funded during the previous year. (1991, c. 734, s. 1; 2000-171, ss. 1, 2; 2005-390, ss. 4, 17; 2006-252, s. 2.12.)

Editor's Note. —

For provisions of Session Laws 2006-223 preamble and ss. 1 through 12, which created the Land and Water Conservation Study Commission, see notes at G.S. 113-44.15 and G.S. 143-211.

Effect of Amendments. —

Session Laws 2006-252, s. 2.12, effective January 1, 2007, in subsection (c2), substituted "a development tier two or three county, as these tiers are defined in G.S. 143B-437.08," for "an enterprise tier four county or an enterprise tier five county, as these tiers are defined in G.S. 105-129.3(a)" in the first sentence, and substituted "development tier one county, as defined in G.S. 143B-437.08," for "an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are defined in G.S. 105-129.3(a)" in the third sentence.

ARTICLE 68A.

North Carolina Dairy Stabilization and Growth Program.

§ 106-812. Findings.

(a) The General Assembly finds that North Carolina has suffered a significant loss of its traditional industrial and agricultural economic base. The State's dairy industry is at serious risk of total collapse unless milk prices reach levels sufficient to allow dairy farmers to meet production costs. At the same time, North Carolina is experiencing rapid population growth and urbanization. This growth and urbanization have fueled a rapid loss of prime agricultural land and green space, resulting in a decline in the quality of life for which the State is known.

(b) The General Assembly finds that the dairy industry in North Carolina makes a substantial economic, environmental, and quality-of-life contribution to the well-being of the citizens of the State. The dairy industry, including both producers and processors, currently contributes over six hundred million dollars ($600,000,000) and 3,000 jobs to the State's economy. Properly managed dairy farms help maintain green space, keep prime agricultural land under production, maintain water quality, enhance food security, and provide a local supply of fresh milk at a reasonable cost to the consumer and to processors in the State. An adequate local milk supply has become increasingly important as transportation costs escalate, making the importation of milk from out-of-state increasingly expensive. The General Assembly finds, however, that despite its importance to the State's economic and environmental well-being, North Carolina's dairy industry is under severe economic pressure, and milk production is declining at an alarming rate. According to United States Department of Agriculture statistics, since 1985 the State has lost sixty-seven percent (67%) of its dairy farms and thirty-five percent (35%) of its processing facilities. North Carolina dairy farms no longer produce sufficient milk for North Carolina's processing facilities to operate. Milk must be imported 10 out of 12 months each year to keep these processing facilities functioning. Further, farm prices for milk exhibit great volatility, creating financial risk and discouraging investment. The General Assembly finds that it is essential to a viable North Carolina dairy industry to have locally produced milk available to processors in the State. The General Assembly further finds that it is essential to the well-being of the citizens of the State to have a local supply of fresh milk available at reasonable cost and not subject to the vagaries of transportation costs and production conditions in other regions of the country.

(c) The General Assembly finds that one of the primary reasons for the decline in milk production in the State is the gap between the price paid to farmers for milk under the federal milk programs and the actual cost of production. Inability to meet production costs combined with increasing land prices have led many milk producers to sell their farms for development and retire or turn to other employment. The General Assembly finds that the most effective means to ensure the continuation of a viable dairy industry in this State is to establish a price floor for milk to enable dairy farmers to meet their production costs. It is the intent of the General Assembly to establish a price support program that will stabilize and reverse the decline in the local milk supply and in the dairy industry in the State and encourage new producers to enter the dairy industry. Sustaining and growing North Carolina's dairy industry will advance the State's goals of preserving and enhancing its economic base and improving the quality of life in the State through maintaining green space and water quality and assuring an adequate local supply of fresh milk. (2006-139, s. 1.)

Editor's Note. — Session Laws 2006-139, s. 3, made this Article effective July 19, 2006.

§ 106-813. North Carolina Dairy Stabilization and Growth Fund.

(a) The North Carolina Dairy Stabilization and Growth Fund is created as a nonreverting account in the Department of Agriculture and Consumer Services. The Fund shall consist of any money appropriated to the Fund by the General Assembly and money made available to it from grants, donations, and other sources. The Board of Agriculture shall actively seek donations, grants, and other sources of money for the Fund.

(b) The Board shall use the monies in the Fund as follows:

(1) Up to two percent (2%) of the money appropriated annually by the General Assembly may be used by the Department for the costs of administering the Dairy Stabilization and Growth Program. In the event that the General Assembly does not make an appropriation to the Fund in a given year, up to two percent (2%) of the balance remaining in the Fund may be used by the Department for the costs of administering the Program.

(2) The monies remaining after administrative expenses are deducted shall be used to provide assistance to North Carolina dairy farmers in accordance with the provisions of G.S. 106-814.

(3) At the end of any fiscal year in which the total payments to North Carolina dairy farmers under G.S. 106-814 are less than fifty percent (50%) of the amount appropriated by the General Assembly for the year, five percent (5%) of the unspent appropriation for the year may be set aside for use in that year and subsequent years for programs to support the development of the dairy industry. (2006-139, s. 1.)

§ 106-814. Dairy Stabilization and Growth Program.

(a) On July 1 of each year the Board of Agriculture shall set a milk support baseline price. The baseline price per hundredweight of milk shall be the average United States Department of Agriculture Federal Milk Market Order Class I price mover for the previous 10 years less fifty cents (50¢).

(b) The Board shall adopt rules implementing the provisions of this Article. The rules shall include criteria for eligibility for distributions from the Fund, procedures for applications for distributions from the Fund, the method by which the amount of a payment to a producer shall be calculated, and the manner of payment to producers.

(c) Each month the Board shall determine whether the monthly announced United States Department of Agriculture Federal Milk Market Order Class I price mover has dropped below the baseline price set for the year. If the monthly announced Class I price mover is lower than the baseline price, then each producer who meets the requirements of subsection (f) of this section shall become eligible for a distribution from the Fund in an amount equal to the difference between the baseline price and the monthly announced Class I price mover multiplied by the hundredweight of milk sold by the producer for the month.

(d) Under exceptional circumstances, and in the discretion of the Board, the amount of any monthly distribution as calculated by the formula set forth in subsection (c) of this section may be increased by an amount not to exceed one dollar ($1.00) per hundredweight of milk sold in that month.

(e) Distributions shall be made to eligible producers at least quarterly, unless in the judgment of the Board the payment amounts are trivial. All payments under the Program are subject to the availability of funds.

(f) To be eligible to receive assistance from the Dairy Stabilization and Growth Fund, a dairy farmer shall demonstrate to the satisfaction of the Board that they are in compliance with the following rules and regulations:

(1) For Grade A milk producers, the federal Grade A milk regulations.
(2) For non-Grade A producers, Article 26 of Chapter 106 of the General Statutes and the rules implementing that Article.

(g) Farmers who fail to demonstrate compliance with applicable rules and regulations shall become ineligible for assistance from the Fund until compliance is attained. (2006-139, s. 1.)

§ 106-815. Report.

The Commissioner of Agriculture shall file a report no later than March 31 of each year with the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, the Chair of the House of Representatives Agriculture Committee, and the Chair of the Senate Committee on Agriculture, Environment, and Natural Resources which shall include the following:

(1) The short- and long-term problems associated with maintaining a viable dairy industry in the State.
(2) Ways to sustain the existing dairy industry in the State.
(3) Opportunities to expand the dairy industry, including attracting both new dairy producers and new processors to the State.
(4) The contribution of dairy farms to the maintenance of prime agricultural land and the quality of life in the State.
(5) An analysis of the effectiveness of the Dairy Stabilization and Growth Program in achieving the goals of maintaining a local supply of fresh milk for processing and consumption, facilitating the entry of young farmers into the dairy industry, and preserving green space along the urban fringe.
(6) Other factors that impact the dairy industry in the State. (2006-139, s. 2.)

Editor's Note. — Session Laws 2006-139, s. 2, effective July 19, 2006, was codified as this section by the Revisor of Statutes.

§§ 106-816 through 106-819: Reserved for future codification purposes.

Chapter 108A.

Social Services.

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108A-88. (Effective July 1, 2007) Determination of State and county financial participation.

ARTICLE 2.

Programs of Public Assistance.

Part 2. Work First Program.

§ 108A-27.3. Electing Counties — Duties of county boards of commissioners.

CASE NOTES

Cited in Chatmon v. N.C. HHS, — N.C. App. —, 622 S.E.2d 684, 2005 N.C. App. LEXIS 2711 (2005).

Part 6. Medical Assistance Program.

§ 108A-54. Authorization of Medical Assistance Program.

Expand Community Care of North Carolina Management to Additional Medicaid Recipients. — Session Laws 2005-276, s. 10.17(a) through (e), as amended by Session Laws 2006-66, s. 10.7A(a), provides: "(a) The Department of Health and Human Services shall expand the scope of Community Care of NC care management model to recipients of Medicaid and dually eligible individuals with a chronic condition and long-term care needs. In expanding the scope, the Department shall focus on the Aged, Blind, and Disabled, and CAP-DA populations for improvement in management, cost-effectiveness, and local coordination of services through Community Care of NC and in collaboration with local providers of care. The Department shall target personal care services, private duty nursing, home health, durable medical equipment, ancillary professional services, specialty care, residential services, including skilled nursing facilities, home infusion therapy, pharmacy, and other services determined target-worthy by the Department. The Department shall pilot communitywide initiatives and shall expand statewide successful models. The initiatives may include one or more pilot projects to control costs and improve quality of care for the aged, blind, and disabled recipients of Medicaid.

"(b) The Department of Health and Human Services may work with the federal government to attain the necessary regulatory and policy relief to better align policy and economic incentives to improve care in the most cost-effective manner and attain savings through controlled utilization of services.

"(c) The Department of Health and Human Services may pay network and primary care providers an enhanced PMPM care management fee and shall also provide additional block grant funds for start-up during the pilot phase.

"(d) Community Care of NC and the Department of Health and Human Services shall review the prescribing of diagnostic testing by physicians to determine if overutilization is occurring. The Department shall include the results of the review in the report required under subsection (e) of this section. If the Department finds that overutilization is occurring, it shall implement a plan to reduce or eliminate the overutilization.

"(e) The Department of Health and Human Services shall report on the implementation of this section, including resulting savings and quality improvement benchmarks, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2007."

Editor's Note. —

Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.10, provides: "The Department of Health and Human Services shall, pursuant to authority under section 1917(b) of the Social Security Act (42 USC § 1396p(c)), as amended by Public Law 109-171 effective January 1, 2007, develop a North Carolina Long-Term Care Partnership Program. The purpose of the Program is to reduce future Medicaid costs for long-term care by delaying or eliminating dependence on Medicaid. The Department shall structure and administer the Program in accordance with applicable federal law and guidelines for qualified State long-term care partnerships. The Program, including the treatment of assets for Medicaid eligibility and estate recovery, notwithstanding statutory provisions on treatment of assets and estate recovery to the contrary, shall offer incentives to individuals to ensure against the substantial costs of providing for their long-term care needs. The Department shall submit the proposed Program to the Senate Appropriations Committee on Health and Human Services, the House of Representative Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division prior to submitting the Program for federal approval of the necessary State Plan amendment. The Program shall not become effective until reviewed in accordance with this section.

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-109, s. 1, provides: "The Department of Health and Human Services shall examine the Community Alternatives Program for Disabled Adults (CAP/DA) in response to issues identified in the Medicaid Institutional Bias Study. The Department shall make an interim report of its findings to the North Carolina Study Commission on Aging on or before August 30, 2006, and shall submit its final report to the North Carolina Study Commission on Aging on or before August 30, 2007. The report shall include actions taken and planned by the Department in response to each bias identified in the study and shall include the following information:

"(1) Information on the utilization of CAP/DA slots, including a history of slots used per year over the last 10 years and the anticipated need during the next 10 years.

"(2) A description of the CAP/DA slot allocation formula; and a breakdown of slots by county, including the reallocation of any unused slots.

"(3) Strategies to ensure that the CAP/DA waiting list is managed as efficiently as possible, including consideration of whether there should be an expiration date tied to unused slots so that they may be reallocated in a timely manner to areas with waiting lists.

"(4) Implementation of a uniform screening/assessment tool and other strategies to ensure maximum operation efficiency and effectiveness for those individuals qualifying for CAP/DA services. This should include information on whether the lists should be prioritized by risk of institutionalization."

§ 108A-54.1. (Effective July 1, 2007) Medicaid buy-in for workers with disabilities.

(a) Title. — This act may be cited as the Health Coverage for Workers With Disabilities Act. The Department shall implement a Medicaid buy-in eligibility category as permitted under P.L. 106-170, Ticket to Work and Work Incentives Improvement Act of 1999. The Department shall establish rules, policies, and procedures to implement this act in accordance with this section.

(b) Definitions. — As used in this section, unless the context clearly requires otherwise:

(1) "FPG" means the federal poverty guidelines.

(2) "HCWD" means Health Coverage for Workers With Disabilities.

(3) "SSI" means Supplemental Security Income.

(4) "Ticket to Work" means the Ticket to Work and Work Incentives Improvement Act of 1999.

(c) Eligibility. — An individual is eligible for HCWD if:

(1) The individual is at least 16 years of age and is less than 65 years of age;

(2) The individual meets Social Security Disability criteria, or the individual has been enrolled in HCWD and then becomes medically improved as defined in Ticket to Work and as further specified by the Department. An individual shall be determined to be eligible under this section without regard to the individual's ability to engage in, or actual engagement in, substantial gainful activity as defined in section 223 of the Social Security Act (42 U.S.C. § 423(d)(4)). In conducting annual redetermination of eligibility, the Department may not determine that an individual participating in HCWD is no longer disabled based solely on the individual's participation in employment or earned income;

(3) The individual's unearned income does not exceed one hundred fifty percent (150%) of FPG, and countable resources for the individual do not exceed the resource limit for the minimum community spouse resource standard under 42 U.S.C. § 1396r, and as further determined by the Department. In determining an individual's countable income and resources, the Department may not consider income or resources that are disregarded under the State Medical Assistance Plan's financial methodology, including the sixty-five-dollar ($65.00) disregard, impairment-related work expenses, student earned-income exclusions, and other SSI program work incentive income disregards; and

(4) The individual is engaged in a substantial and reasonable work effort (employed) as provided in this subdivision and as further defined by the Department and allowable under federal law. For purposes of this subsection, "engaged in substantial and reasonable work effort" means all of the following:

a. Working in a competitive, inclusive work setting, or self-employed.

b. Earning at least the applicable minimum wage.

c. Having monthly earnings above the SSI basic sixty-five-dollar ($65.00) earned-income disregard.

d. Being able to provide evidence of paying applicable Medicare, Social Security, and State and federal income taxes.

The Department may impose additional earnings requirements in defining "engaged in substantial and reasonable work effort" for individuals who are eligible for HCWD based on medical improvement.

Individuals who participate in HCWD but thereafter become unemployed for involuntary reasons, including health reasons, shall have continued eligibility in HCWD for up to 12 months from the time of involuntary unemployment, so long as the individual (i) maintains a connection with the workforce, as determined by the Department, (ii) meets all other eligibility criteria for HCWD during the period, and (iii) pays applicable fees, premiums, and co-payments.

(d) Fees, Premiums, and Co-Payments. — Individuals who participate in HCWD and have countable income greater than one hundred fifty percent (150%) of FPG shall pay an annual enrollment fee of fifty dollars ($50.00) to their county department of social services. Individuals who participate in HCWD and have countable income greater than or equal to two hundred percent (200%) of FPG shall pay a monthly premium in addition to the annual fee. The Department shall set a sliding scale for premiums, which is consistent with applicable federal law. An individual with countable income equal to or greater than four hundred fifty percent (450%) of FPG shall pay not less than one hundred percent (100%) of the cost of the premium, as determined by the Department. The premium shall be based on the experience of all individuals participating in the Medical Assistance Program. Individuals who participate in HCWD are subject to co-payments equal to those required under the North Carolina Health Choice Program. (2005-276, s. 10.18(a); 2006-66, s. 10.9(a).)

Editor's Note. —

Session Laws 2005-276, s. 10.18(c), as amended by Session Laws 2006-66, s. 10.9(a), makes this section effective July 1, 2007.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2006."

Session Laws 2006-66, s. 10.9(b), provides: "The Department of Health and Human Services shall study and develop a plan for the implementation of the Ticket to Work Program. The Department shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2007, on the results of its study. The report shall include what system changes need to be made to implement the Ticket to Work Program, how soon the changes can be made, and an analysis of the five-year fiscal impact of the Program."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 108A-54.2. Procedures for changing medical policy.

The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

(1) During the development of new medical coverage policy or amendment to existing medical coverage policy, consult with and seek the advice of the Physician Advisory Group of the North Carolina Medical Society and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy.

(2) At least 45 days prior to the adoption of new or amended medical coverage policy, the Department shall:
  a. Publish the proposed new or amended medical coverage policy on the Department's Web site;
  b. Notify all Medicaid providers of the proposed, new, or amended policy; and
  c. Upon request, provide persons copies of the proposed medical coverage policy.

(3) During the 45-day period immediately following publication of the proposed new or amended medical coverage policy, accept oral and written comments on the proposed new or amended policy.
(4) If, following the comment period, the proposed new or amended medical coverage policy is modified, then the Department shall, at least 15 days prior to its adoption:
    a. Notify all Medicaid providers of the proposed policy;
    b. Upon request, provide persons notice of amendments to the proposed policy; and
    c. Accept additional oral or written comments during this 15-day period. (2006-66, s. 10.4.)

Editor's Note. — Session Laws 2006-66, s. 28.7 made this section effective July 1, 2006.

Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 108A-55. Payments.

CASE NOTES

Cited in In re Nantz, — N.C. App. —, 627 S.E.2d 665, 2006 N.C. App. LEXIS 718 (2006).

§ 108A-55.1. Medicare enrollment required.

The Department shall require State Medical Assistance Program recipients who qualify for Medicare to enroll in Medicare, in accordance with Title XIX of the Social Security Act, in order to pay medical expenditures that qualify for payment under Medicare Parts B and D, except that enrollment in Part D is not required if the recipient has creditable prescription drug coverage as defined by federal law.

Failure to enroll in Medicare shall result in nonpayment of these expenditures under the State Medical Assistance Program. A provider may seek payment for services from Medicaid enrollees who are eligible for but not enrolled in Medicare Parts B and D. (2003-284, s. 10.27; 2006-66, s. 10.6.)

Editor's Note. — Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 10.6, effective July 1, 2006, substituted "Parts B and D, except that enrollment in Part D is not required if the recipient has creditable prescription drug coverage as defined by federal law" for "Part B" at the end of the first paragraph; and substituted "Parts B and D" for "Part B" at the end of the last sentence in the second paragraph.

§ 108A-55.4. (Effective July 1, 2007) Insurers to provide certain information to Department of Health and Human Services.

(a) As used in this section, the terms:
  (1) "Department" means the Department of Health and Human Services.
  (2) "Division" means the Division of Medical Assistance of the Department of Health and Human Services.

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(3) "Health insurer" includes self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, [29 USC Section 1167(1)]), service benefit plans, managed care organizations, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service as a condition of doing business in the State.

(4) "Medical assistance" means medical assistance benefits provided under the State Medical Assistance Plan.

(b) Health insurers, and pharmacy benefit managers regulated as third-party administrators under Article 56 of Chapter 58 of the General Statutes, shall provide, with respect to individuals who are eligible for, or are provided, medical assistance, upon request of the Division, information to determine during what period the individual or the individual's spouse or dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address, and identifying number of the plan) in a manner prescribed by the Division. Notwithstanding any other provision of law, every insurer issuing a health benefit plan shall provide, not more frequently than twelve times in a year and at no cost, to the Department of Health and Human Services, upon its request, information, including automated data matches conducted under the direction of the Department of Health and Human Services, Division of Medical Assistance, as necessary to (i) identify individuals covered under the insurer's health benefit plans who are also recipients of medical assistance; (ii) determine the period during which the individual or the individual's spouses or the individual's dependents may be or may have been covered by the health benefit plan; and (iii) determine the nature of the coverage. To facilitate the Division in obtaining this and other related information, every health insurer shall:

(1) Cooperate with the Division to determine whether a named individual who is a recipient of medical assistance may be covered under the insurer's health benefit plan and eligible to receive benefits under the health benefit plan for services provided under the State Medical Assistance Plan.

(2) Respond to the request for information within 90 working days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of medical assistance who is covered by the insurer's health benefit plan.

(3) Accept the Division's right of recovery and the assignment to the Division of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State Medical Assistance Plan.

(4) Respond to any inquiry by the Division regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service.

(5) Agree not to deny a claim submitted by the Division solely on the basis of the date of submission of the claim, the type of format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:

a. The claim is submitted by the Division within the three-year period beginning on the date on which the item or service was furnished; and

b. Any action by the Division to enforce its rights with respect to such claim is commenced within six years of the Division's submission of the claim.

(c) An insurer that complies with this section shall not be liable on that account in any civil or criminal actions or proceedings. (2006-66, s. 10.8; 2006-221, ss. 9(a)-(c).)

Editor's Note. — Session Laws 2006-66, s. 10.8, as amended by Session Laws 2006-221, s. 9(c), made this section effective January 1, 2007.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.8, effective January 1, 2007, enacted this section as G.S. 58-50-46; it was recodified on the same date as G.S. 108A-55.4 by Session Laws 2006-221, s. 9(a).

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-221, s. 9(b), effective July 1, 2007, substituted "proper documentation" for "property documentation" in the introductory language of subdivision (b)(5).

§ 108A-57. Subrogation rights; withholding of information a misdemeanor.

CASE NOTES

Subrogation Rights. —

When a minor recipient of Medicaid benefits settled medical negligence claims with health care providers, equitable subrogation principles did not apply to the right of the Department of Health and Human Services, Division of Medical Assistance, to a share of the settlement, because G.S. 108A-57(a) specifically provided that the State "shall be subrogated to all rights of recovery," "notwithstanding any other provisions of the law." Ezell v. Grace Hosp., Inc., — N.C. App. —, 623 S.E.2d 79, 2005 N.C. App. LEXIS 2713 (2005).

Right of the Department of Health and Human Services, Division of Medical Assistance (DMA), to a share of a Medicaid recipient's settlement with healthcare providers who allegedly negligently injured her was limited to the amount of Medicaid benefits paid for the providers' alleged negligence, because G.S. 108A-57 gave DMA subrogation rights to proceeds obtained "by reason of injury or death, indicating the legislature's intent to limit that subrogation right to the amount resulting from such injury or death, and the legislature did not intend that DMA could recoup for medical treatment unrelated to the injury for which the injured party received a settlement. Ezell v. Grace Hosp., Inc., — N.C. App. —, 623 S.E.2d 79, 2005 N.C. App. LEXIS 2713 (2005).

When the Department of Health and Human Services, Division of Medical Assistance (DMA) sought a share of a Medicaid recipient's settlement with healthcare providers who allegedly negligently injured her, but there was no evidence before the trial court of a causal nexus between the DMA's lien on the recipient's recovery, under G.S. 108A-57, and that recovery, the matter had to be remanded for findings on whether such a nexus existed. Ezell v. Grace Hosp., Inc., — N.C. App. —, 623 S.E.2d 79, 2005 N.C. App. LEXIS 2713 (2005).

§ 108A-58: Repealed by Session Laws 2006-66, s. 10.5(a), effective July 1, 2006.

§ 108A-58.1. Ineligibility for medical assistance based on transferring assets for less than fair market value.

(a) General Rule. — Except as otherwise provided herein, an individual who is otherwise eligible to receive medical assistance under this Part is ineligible for Medicaid coverage and payment for the services specified in subsection (d) during the period specified in subsection (c) if the individual or the individual's spouse transfers an asset for less than fair market value on or after the "lookback date" specified in subsection (b).

(b) Lookback Date. —

(1) Except as otherwise provided herein, the lookback date is the date specified in 42 U.S.C. § 1396p(c)(1)(B).

(2) Notwithstanding subdivision (1), the lookback date with respect to the medical services specified in subdivision (d)(2) is the date specified in 42 U.S.C. § 1396p(c)(1)(B) or February 1, 2003, whichever is later.

(c) Penalty Period. — The penalty period for the transfer of assets for less than fair market value is the period specified in 42 U.S.C. § 1396p(c)(1)(D), (E), and (H).

(d) Medical Services. —

(1) In the case of an institutionalized individual, the transfer of assets penalty applies with respect to nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and to home- or community-based services furnished under the State's Community Alternatives Program waiver pursuant to 42 U.S.C. § 1396n(c) or (d), and pursuant to the hardship waiver under subsection (k) of this section.

(2) In the case of a noninstitutionalized individual, the transfer of assets penalty applies with respect to home health services and personal care services as defined in 42 U.S.C. § 1396d(a)(7) and (24) and, to the extent permitted by federal law, such other long-term care services specified by rules adopted by the Department of Health and Human Services pursuant to subsection (k) of this section.

(e) Assets. — Assets are the income and resources of an individual or the individual's spouse (including the individual's or spouse's home) as defined in 42 U.S.C. § 1396p(h) and 42 U.S.C. § 1396p(c)(1)(G), (I), and (J).

(f) Fair Market Value and Uncompensated Value. —

(1) The fair market value of an asset is the value (minus any valid and legally enforceable liens, mortgages, and encumbrances against the asset) that would have been received if the asset had been sold for good and valuable consideration at the prevailing market price at the time the asset was transferred. In the case of real or personal property that is taxable under Subchapter II of Chapter 105 of the General Statutes, there is a rebuttable presumption that the fair market value of the property is its most recent value as ascertained under Subchapter II of Chapter 105 of the General Statutes (minus any valid and legally enforceable liens, mortgages, and encumbrances against the property).

(2) The uncompensated value of an asset is its fair market value minus the amount of good and valuable consideration received in exchange for the asset's transfer.

(g) Individual. — An individual is a person who applies for or is receiving medical assistance under this Part regardless of whether the person was, at the time an asset was transferred, a Medicaid applicant or recipient. The term "individual" also includes an individual's legal representative, anyone acting at the individual's direction or request, and any person, agency, or court acting lawfully on behalf of the individual.

(h) Institutionalized and Noninstitutionalized Individuals. —

(1) An institutionalized individual is an individual who meets the criteria set forth in 42 U.S.C. § 1396p(h)(3), regardless of whether the individual was institutionalized at the time an asset was transferred.

(2) A noninstitutionalized individual is any individual who (i) is not an institutionalized individual, (ii) is an aged, blind, or disabled person who is categorically or medically needy pursuant to 42 C.F.R. § 120 Subpart B, C, or D or a qualified Medicare beneficiary as defined in 42 U.S.C. § 1396d(p)(1), and (iii) is not eligible for medical assistance under this Part based on his or her eligibility for an optional State supplement pursuant to 42 C.F.R. § 435.232.

(i) Exceptions. —

(1) This section does not apply if an individual establishes by the greater weight of the evidence that the transfer was exclusively for some purpose other than establishing or retaining eligibility for medical assistance under this Part.

(2) This section does not apply to any transfer specified in 42 U.S.C. § 1396p(c)(2)(A), (B), (C)(i), or (C)(iii).

(j) Application to Life Estates and Income Producing Real Property. — The Department of Health and Human Services may apply federal transfer of assets policies in accordance with this section to (i) life estates purchased by or on behalf of the recipient, and (ii) to real property excluded as "income producing", tenancy-in-common, or as nonhomesite property made "income producing." The Department shall exclude from countable resources any life estate in real property that is in the recipient's home and is measured by the recipient's life. Federal transfer of assets policies applied to income producing real property shall become effective not earlier than October 1, 2001. Federal transfer of assets policies applied to real property excluded as tenancy-in-common, or as nonhomesite property made income producing in accordance with this subsection, shall become effective not earlier than October 1, 2005.

(k) Hardship Waiver. — The Department of Health and Human Services shall waive a transfer of assets penalty that has been imposed or is imposable under this section if the Department determines that imposition of the penalty would create an undue hardship.

(*l*) Rules and Compliance with Federal Law. —

(1) This section shall be interpreted and administered consistently with governing federal law, including 42 U.S.C. § 1396p(c).

(2) The Department of Health and Human Services shall determine and publish at least annually the average monthly cost of nursing facility services for private patients that will be used in determining the length of a penalty period under this section.

(3) The Department of Health and Human Services shall provide for a hardship waiver process in accordance with 42 U.S.C. § 1396p(c)(2)(D).

(4) The Department of Health and Human Services may adopt administrative rules that are necessary and appropriate to implement this section or the requirements of 42 U.S.C. § 1396p(c) or other federal laws governing the transfer of assets and Medicaid eligibility. (2006-66, s. 10.5(b); 2006-221, ss. 8(a)-(c).)

Editor's Note. — Session Laws 2006-66, s. 28.7, made this section effective July 1, 2006.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-221, S. 8(a)-(c), effective July 1, 2006, added "and pursuant to the hardship waiver under subsection (k) of this section" at the end of subdivision (b)(1); in subdivision (h)(2), inserted "Subpart B, C, or D" near the middle, and deleted "(3)" preceding "(iii) is not eligible'" and deleted the former second sentence of subsection (j), which read: "The transfer of assets policy shall apply only to an institutionalized individual or the individual's spouse, as defined in subsection (h) of this section."

§ 108A-70.5. (Effective until July 1, 2007) Medicaid Estate Recovery Plan.

(a) There is established in the Department of Health and Human Services, the Medicaid Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of 1993, to recover from the estates of recipients of medical assistance an equitable amount of the State and federal shares of the cost paid the recipient. The Department shall administer the program in accordance with applicable federal law and regulations, including those under Title XIX of the Social Security Act, 42 U.S.C. § 1396(p).

(b) As used in this section:

(1) "Medical assistance" means medical care services paid for by the North Carolina Medicaid Program on behalf of the recipient:
  a. If the recipient is receiving these medical care services as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and cannot reasonably be expected to be discharged to return home; or
  b. If the recipient is 55 years of age or older and is receiving these medical care services, including related hospital care and prescription drugs, for nursing facility services, personal care services, or home- and community-based services.

(2) "Estate" means all the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1.

(c) The amount the Department recovers from the estate of any recipient shall not exceed the amount of medical assistance made on behalf of the recipient and shall be recoverable only for medical care services prescribed in subsection (b) of this section. The Department is a fifth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of determining the order of claims against an estate; provided, however, that judgments in favor of other fifth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

(d) The Department of Health and Human Services shall adopt rules pursuant to Chapter 150B of the General Statutes to implement the Plan, including rules to waive whole or partial recovery when this recovery would be inequitable because it would work an undue hardship or because it would not be administratively cost-effective and rules to ensure that all recipients are notified that their estates are subject to recovery at the time they become eligible to receive medical assistance.

(e) Regarding trusts that contain the assets of an individual who is disabled as defined in Title 19 of Section 1014(a)(3) of the Social Security Act, as amended, if the trust is established and managed by a nonprofit association, to the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the nonprofit association, the trust pays to the Department from these remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the North Carolina Medicaid Program. (1993 (Reg. Sess., 1994), c. 769, s. 25.47(a); 1997-443, s. 11A.118(a); 2002-126, s. 10.11(b).)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as in effect July 1, 2007, see the following section also numbered G.S. 108A-70.5.

§ 108A-70.5. (Effective July 1, 2007) Medicaid Estate Recovery Plan.

(a) There is established in the Department of Health and Human Services, the Medicaid Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of 1993. The Department shall administer the program in accordance with applicable federal law and regulations, including those under Title XIX of the Social Security Act, 42 U.S.C. § 1396(p). To the extent allowed by section 1396(p) of Title XIX of the Social Security Act, the Department may impose liens against real property, including the home, of a recipient of medical

G.S. 108A-70.5 is set out twice. See notes.

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assistance. The Department shall file any liens imposed under this section in the court where the property is located in the same manner as for any other lien under North Carolina law.

(b) As used in this section:

(1) "Medical assistance" means medical care services paid for by the North Carolina Medicaid Program on behalf of the recipient:

a. If the recipient of any age is receiving medical care services as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and cannot reasonably be expected to be discharged to return home; or

b. If the recipient is 55 years of age or older and is receiving one or more of the following medical care services:

1. Nursing facility services.
2. Home and community-based services.
3. Hospital care and prescription drugs related to nursing facility services or home and community-based services.
4. Personal care services.
5. Medicare premiums.
6. Private duty nursing.
7. Home health aide services.
8. Home health therapy.
9. Speech pathology services.

(2) "Estate" means all the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1.

(3) "Home" means property in which a recipient has, or had immediately before or at the time of the recipient's death, an ownership interest or legal title to, consisting of the recipient's dwelling and the land used and operated in connection with the dwelling.

(c) The amount the Department recovers from the estate of any recipient shall not exceed the amount of medical assistance made on behalf of the recipient and shall be recoverable only for medical care services prescribed in subsection (b) of this section. To the extent that allowable Medicaid claims are not satisfied as a result of the execution of any liens held by the Department, the Department is a fifth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of determining the order of claims against an estate; provided, however, that judgments in favor of other fifth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

(d) The Department of Health and Human Services shall adopt rules pursuant to Chapter 150B of the General Statutes to implement the Plan to ensure that all recipients are notified that their estates are subject to recovery at the time they become eligible to receive medical assistance.

(e) Regarding trusts that contain the assets of an individual who is disabled as defined in Title 19 of Section 1014(a)(3) of the Social Security Act, as amended, if the trust is established and managed by a nonprofit association, to the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the nonprofit association, the trust pays to the Department from these remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the North Carolina Medicaid Program. (1993 (Reg. Sess., 1994), c. 769, s. 25.47(a); 1997-443, s. 11A.118(a); 2002-126, s. 10.11(b); 2005-276, s. 10.21C(a); 2005-345, s. 16; 2006-66, s. 10.9B.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section also numbered G.S. 108A-70.5.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2005-276, s. 10.21C(a), as amended by Session Laws 2005-345, s. 16, and as amended by Session Laws 2006-66, s. 10.9B, effective July 1, 2007, and applicable to recipients of medical assistance on or after that date, in subsection (a), in the first sentence, deleted "to recover from the estates of recipients of medical assistance an equitable amount of the State and federal shares of the cost paid the recipient" preceding "1993" and added the last two sentences; substituted "of any age is receiving" for "is receiving these" in sub-subdivision (b)(1)a.; rewrote sub-subdivision (b)(1)b.; added subdivision (b)(3); in subsection (c), at the beginning of the second sentence, added "To the extent that allowable Medicaid claims are not satisfied as a result of the execution of any liens held by the Department"; and in subsection (d), deleted "including rules to waive whole or partial recovery when this recovery would be inequitable because it would work an undue hardship or because it would not be administratively cost-effective and rules" following "Plan."

§ 108A-70.6. (Effective July 1, 2007) Postponement of estate recovery required in cases of undue hardship.

(a) The Department shall postpone or waive its claim pursuant to G.S. 108A-70.5, including the execution of a lien in whole or in part, when the Department determines that the enforcement of its claim would work an undue hardship to an heir or a beneficiary of the Medicaid recipient. Nothing in this section shall be construed to prevent the Department from enforcing its claim if the owner of the property sells or transfers ownership of the property that is subject to the Department's claim.

(b) A claim of undue hardship to an heir or beneficiary shall be made in writing to the Department within 30 days after the receipt of notification of the Medicaid lien or claim. The claim for hardship shall describe the financial circumstance of the heir or beneficiary and the basis for the claim.

(c) An undue hardship exists if:

(1) The property subject to the lien has a tax value that is equal to or less than thirty thousand dollars ($30,000).

(2) The property subject to the Department's claim is the sole source of income for a surviving heir or beneficiary, and the loss of the net income derived from the property would result in the heir's or beneficiary's annual gross income to fall below one hundred percent (100%) of the federal poverty guidelines in the year in which the hardship is claimed; or

(3) The sale of the property would be required to satisfy the Department's claim, and all of the following conditions are met:

a. The heir or beneficiary resided in the decedent's home on a continual basis for at least 24 months immediately prior to the date of the recipient's death and the heir or beneficiary was using the property as a principal place of residence on the date of the recipient's death;

b. The heir or beneficiary has, from the time the Department first presents its claim for recovery against the deceased recipient's estate and after, annual gross income in the amount not exceeding one hundred fifty percent (150%) of the federal poverty income standard;

c. The heir or beneficiary owns no other real property or agrees to sell other real property in partial payment of the Department's claim; and

d. The heir or beneficiary owns other assets not exceeding a net value of thirty thousand dollars ($30,000). (2005-276, s. 10.21C(b); 2005-345, s. 16; 2006-66, s. 10.9B.)

Editor's Note. —
Session Laws 2005-276, s. 10.21C(c), as amended by Session Laws 2005-345, s. 16, and as amended by Session Laws 2006-66, s. 10.9B, made this section effective July 1, 2007, and applicable to recipients of medical assistance on or after that date.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 108A-70.7. (Effective July 1, 2007) Estate recovery not cost effective.

The Department shall waive its claim or lien imposed under G.S. 108A-70.5 upon the Department's determination that:

(1) The amount of Medicaid payments for services and benefits subject to recovery is less than eight thousand dollars ($8,000); or

(2) The assets subject to the Department's claim or lien are less than five thousand dollars ($5,000). (2005-276, s. 10.21C(b); 2005-345, s. 16; 2006-66, s. 10.9B.)

Editor's Note. —
Session Laws 2005-276, s. 10.21C(c), as amended by Session Laws 2005-345, s. 16, and as amended by Session Laws 2006-66, s. 10.9B, made this section effective July 1, 2007, and applicable to recipients of medical assistance on or after that date.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 108A-70.8. (Effective July 1, 2007) Notice of estate recovery.

(a) The Department shall provide each applicant for medical assistance, or the applicant's representative, written notice that:

(1) Receipt of medical assistance may result in a Medicaid claim or lien upon the recipient's estate, including the recipient's home, to recover costs paid on behalf of the recipient for medical assistance in accordance with G.S. 108A-70.5; and

(2) The Department may seek a lien against the real property of a recipient of any age before or after the recipient's death in the amount of assistance paid or to be paid for the recipient if the recipient is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and the Department determines, after notice and an opportunity for a hearing in accordance with applicable law, that the recipient cannot reasonably be expected to be discharged and return home.

(b) Notice under this section shall also explain the hardship conditions under which estate recovery, including the execution of a lien, may be postponed or waived. (2005-276, s. 10.21C(b); 2005-345, s. 16; 2006-66, s. 10.9B.)

Editor's Note. —

Session Laws 2005-276, s. 10.21C(c), as amended by Session Laws 2005-345, s. 16, and as amended by Session Laws 2006-66, s. 10.9B, made this section effective July 1, 2007, and applicable to recipients of medical assistance on or after that date.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 108A-70.9. (Effective July 1, 2007) County departments of social services to provide information.

The Department may require the county department of social services administering medical assistance to gather and provide the Department with the information and administrative or legal assistance needed to recover medical assistance under G.S. 108A-70.5. The Department shall pay to the county department of social services an amount equal to twenty percent (20%) of the nonfederal share of recovery collected by the Department. The Department may withhold payments under this section for a county department's failure to comply with the Department's requirements under this section. (2005-276, s. 10.21C(b); 2005-345, s. 16; 2006-66, s. 10.9B.)

Editor's Note. —

Session Laws 2005-276, s. 10.21C(c), as amended by Session Laws 2005-345, s. 16, and as amended by Session Laws 2006-66, s. 10.9B, made this section effective July 1, 2007, and applicable to recipients of medical assistance on or after that date.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

ARTICLE 4.

Public Assistance and Social Services Appeals and Access to Records.

§ 108A-79. Appeals.

CASE NOTES

Standard of Review. — While G.S. 108A-79(k) authorizes a trial court to take testimony and reexamine the facts, this authorization is only to determine whether a final decision of the North Carolina Department of Health and Human Services (DHHS) is in error; G.S. 108A-79(k) requires the trial court to sit as both a trial and appellate court and in order to give meaning to both functions, the trial court is limited to determining whether the reason offered for the DHHS's decision to sanction a benefits recipient was factually and legally correct; G.S. 108A-79(k) should not be read to authorize the trial court to rehear a case, to make wholly new factual findings, and to determine that alternative grounds not relied upon by the DHHS would also justify a sanction. Chatmon v. N.C. HHS, — N.C. App. —, 622 S.E.2d 684, 2005 N.C. App. LEXIS 2711 (2005).

Findings of Fact Inadequate. — Work First benefits recipient's appeal of the affirmance of a reduction of her benefits was remanded to the trial court as the trial court's findings of fact related to the recipient's diabetic condition and her ability to work merely recited the evidence, did not articulate what the trial court considered to be the definition of disability in the Americans With Disabilities Act (ADA), specifically 42 U.S.C.S. § 12102(2), and were inadequate for the appellate court to review de novo whether the trial court properly affirmed the North Carolina Department of Health and Human Services' decision that the sanctions did not violate the ADA. Chatmon v. N.C. HHS, — N.C. App. —, 622 S.E.2d 684, 2005 N.C. App. LEXIS 2711 (2005).

Article 5.

Financing of Programs of Public Assistance and Social Services.

§ 108A-88. (Effective until July 1, 2007) Determination of State and county financial participation.

Before February 15 of each year, the Secretary shall notify the county board of commissioners, the county manager, the director of social services, and the director of public health of each county of the amount of State and federal moneys estimated to be available, as best can be determined, to that county for programs of public assistance, social services, public health, and related administrative costs, as well as the percentage of county participation expected to be required for the budget for the succeeding fiscal year. In odd-numbered years, in making such notification, the Secretary shall notify the counties of any changes in funding levels, formulas, or programs relating to public assistance and public health proposed by the Governor to the General Assembly in the proposed budget and budget report submitted under the Executive Budget Act. Counties shall be notified of additional changes in the proposed budget of the Governor and the Advisory Budget Commission that are made by the General Assembly or the United States Congress subsequent to the February 15 estimates. (1937, c. 288, ss. 9, 21, 39, 51; 1943, c. 505, s. 8; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 1418, s. 1; 1977, c. 1089, s. 1; 1977, 2nd Sess., c. 1219, s. 21; 1979, 2nd Sess., c. 1198; 1981, c. 275, s. 1; 2001-424, s. 21.16.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as is in effect July 1, 2007, see the following section, also numbered G.S. 108A-88.

§ 108A-88. (Effective July 1, 2007) Determination of State and county financial participation.

Before February 15 of each year, the Secretary shall notify the county board of commissioners, the county manager, the director of social services, and the director of public health of each county of the amount of State and federal moneys estimated to be available, as best can be determined, to that county for programs of public assistance, social services, public health, and related administrative costs, as well as the percentage of county participation expected to be required for the budget for the succeeding fiscal year. In odd-numbered years, in making such notification, the Secretary shall notify the counties of any changes in funding levels, formulas, or programs relating to public assistance and public health proposed by the Governor to the General Assembly in the proposed budget and budget report submitted under the State Budget Act. Counties shall be notified of additional changes in the proposed budget of the Governor that are made by the General Assembly or the United

G.S. 108A-88 is set out twice. See notes.

States Congress subsequent to the February 15 estimates. (1937, c. 288, ss. 9, 21, 39, 51; 1943, c. 505, s. 8; 1969, c.546, s. 1; 1973, c. 476, s. 138; c. 1418, s. 1; 1977, c. 1089,s. 1; 1977, 2nd Sess., c. 1219, s. 21; 1979, 2nd Sess., c. 1198; 1981, c. 275, s. 1; 2001-424, s. 21.16; 2006-203, s. 26.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 108A-88.

Editor's Note. — Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act [July 1, 2007] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 26, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act" for "Executive Budget Act" at the end of the second sentence; and deleted "and the Advisory Budget Commission" following "the Governor" from the middle of the last sentence.

Chapter 110.

Child Welfare.

Article 7.

Child Care Facilities.

Sec.
110-93.1. [Repealed.]

ARTICLE 7.

Child Care Facilities.

§ 110-93.1: Repealed by Session Laws 2006-66, s. 10.2(a), (b), effective July 1, 2006.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

ARTICLE 9.

Child Support.

§ 110-129. Definitions.

CASE NOTES

Cited in Guilford County v. Davis, — N.C. App. —; 629 S.E.2d 178, 2006 N.C. App. LEXIS 963 (2006).

§ 110-135. Debt to State created.

CASE NOTES

Discretion of Court. —

Trial court's expressed concerns over the fact that the mother had named multiple persons as the minor child's father and had waited over 15 years before instituting suit against the father was sufficient to support its denial of a request for reimbursement of past paid public assistance; in light of the trial court's ability to consider equitable factors in determining whether to order reimbursement, and the highly deferential standard on review, the denial was not wholly unsupported by reason, nor otherwise a manifest abuse of discretion. State ex rel. Gillikin v. McGuire, 174 N.C. App. 347, 620 S.E.2d 899, 2005 N.C. App. LEXIS 2364 (2005).

§ 110-136.3. Income withholding procedures; applicability.

CASE NOTES

Income Withholding Mandatory. — When services were being provided by a child support enforcement agency established under Title IV-D of the Social Security Act, it was error for the trial court not to order wage withholding from a father who had been ordered to pay child support. In IV-D cases, G.S. 110-136.3 and G.S. 110-136.4(b) required wage withholding. Guilford County v. Davis, — N.C. App. —, 629 S.E.2d 178, 2006 N.C. App. LEXIS 963 (2006).

§ 110-136.4. Implementation of withholding in IV-D cases.

CASE NOTES

Income Withholding Mandatory. — When services were being provided by a child support enforcement agency established under Title IV-D of the Social Security Act, it was error for the trial court not to order wage withholding from a father who had been ordered to pay child support. In IV-D cases, G.S. 110-136.3 and G.S. 110-136.4(b) required wage withholding. Guilford County v. Davis, — N.C. App. —, 629 S.E.2d 178, 2006 N.C. App. LEXIS 963 (2006).

Chapter 113.

Conservation and Development.

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

Article 13.

Jurisdiction of Conservation Agencies.

Sec.
113-133.1. Limitations upon local regulation of wildlife resources; certain local acts retained.

Article 14A.

Coastal and Estuarine Commercial Fishing Licenses.

113-169.1. Permits for gear, equipment, and other specialized activities authorized.

Article 14B.

Coastal Recreational Fishing Licenses.

113-174.2. Coastal Recreational Fishing License.
113-174.3. For Hire Blanket CRFL.

Article 16.

Cultivation of Shellfish.

113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.

Article 19.

Atlantic States Marine Fisheries Compact and Commission.

Sec.
113-258. (Effective until July 1, 2007) Commission subject to provisions of Executive Budget Act.
113-258. (Effective July 1, 2007) Commission subject to provisions of State Budget Act.

Article 21.

Licenses and Permits Issued by the Wildlife Resources Commission.

113-270.3. Special activity licenses; big game kill reports.
113-271. Hook-and-line licenses in inland and joint fishing waters.
113-272.3. Special provisions respecting fishing licenses; grabbling; taking bait fish; use of landing nets; lifetime licenses issued from Wildlife Resources Commission headquarters; personalized lifetime sportsman combination licenses.

Article 23C.

North Carolina Seafood Industrial Park Authority.

113-315.31. Issuance of bonds.

Article 25A.

Unified Licenses.

113-351. Unified hunting and fishing licenses; subsistence license waiver.

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2C.

State Parks Act.

§ 113-44.11. Preparation of a System Plan.

Editor's Note. — For provisions of Session Laws 2006-223 preamble and ss. 1 through 12, which created the Land and Water Conservation Study Commission, see notes at G.S. 113-44.15 and G.S. 143-211.

§ 113-44.14. Additions to and deletions from the State Parks System.

Editor's Note. —

Session Laws 2006-138 provides in the preamble:

"Whereas, Section 5 of Article XIV of the North Carolina Constitution states that it shall be a proper function of the State of North

Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

"Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources, and that such resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

"Whereas, mountain bogs are wetlands that support a variety of rare and unique species. Because of their location on small flat sites in the mountains, bogs are highly vulnerable to damage from clearing, grading, and development. Very few of North Carolina's mountain bogs remain intact, and they are one of the State's most endangered habitats; and

"Whereas, Mountain Bog State Natural Area would be comprised of two mountain bogs, Sugar Mountain Bog and Pineola Bog; and

"Whereas, rare species found at one or both of the bogs include the bog turtle, bog rose, bog fern, cranberry, gray's lily, large purple-fringed orchid, purple-leaf willowherb, four-toed salamander, and Baltimore checkerspot; and

"Whereas, the Mountain Bog site has been found to possess biological resources of statewide significance; and

"Whereas, savannas are renowned for extraordinary plant diversity and high numbers of rare species. Savannas are an important component of the State's natural landscape, but are poorly represented in the existing State Parks System; and

"Whereas, the Sandy Run Savannas State Natural Area would be comprised of a cluster of nationally significant savannas along the border of Pender and Onslow Counties; and

"Whereas, the Sandy Run Savannas site is important as a military buffer and is strategically located as a hub surrounded by Camp Lejeune, Holly Shelter Game Land, and Angola Bay Game Land; and

"Whereas, the Sandy Run Savannas site contains rare species that include Venus flytrap, golden sedge, red-cockaded woodpecker, Cooley's meadowrue, yellow fringeless orchid, Carolina goldenrod, and rough-leaf loosestrife; and

"Whereas, the Sandy Run Savannas site has been found to possess biological resources of statewide significance; andWhereas, Cabin Lake possesses significant scenic and recreational resources; Now, therefore,"

Session Laws 2006-138, ss. 1 and 2, effective July 19, 2006, authorize the Department of Environment and Natural Resources to add Mountain Bog State Natural Area and Sandy Run Savannas State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

Session Laws 2006-138, s. 3, effective July 19, 2006, provides: "The Division of Parks and Recreation of the Department of Environment and Natural Resources shall study the feasibility and the desirability of acquiring land and establishing a State Park at Cabin Lake. The study shall include estimates of the cost of developing the proposed park. The Division shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 15 January 2007."

§ 113-44.15. Parks and Recreation Trust Fund.

Land and Water Conservation Study Commission. — Session Laws 2006-223 provides in the preamble:

"Whereas, North Carolina has more than 3,000 miles of streams that fail to meet State water quality standards; and

"Whereas, North Carolina is losing natural areas, historic sites, and agricultural and forestry lands at a rate of over 100,000 acres per year; and

"Whereas, North Carolina's waters, open lands, and historic properties are critical to our State's economic future and quality of life; and

"Whereas, land costs are increasing rapidly; and

"Whereas, Article XIV, Section V of the State Constitution states, 'North Carolina must use every appropriate way to preserve as part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands and places of beauty;' and

"Whereas, G.S. 113A-241(a) provides, 'The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009.'; and

"Whereas, traditional methods for funding the State's Clean Water Management Trust Fund, Parks and Recreation Trust Fund, Natural Heritage Trust Fund, Agricultural Development and Farmland Preservation Trust Fund, and economic development efforts related to land and water conservation have failed to keep pace with conservation needs and rapidly rising land costs and are not able to meet the State's conservation goals at current funding levels; Now, therefore,"

Session Laws 2006-223, ss. 1-12, provide:

"SECTION 1. Commission Established. — The Land and Water Conservation Commission is hereby established.

"SECTION 2. Membership. — The Commission shall consist of 16 members as follows:

"(1) Five members appointed by the President Pro Tempore of the Senate.

"(2) Five members appointed by the Speaker of the House of Representatives.

"(3) The State Treasurer or the State Treasurer's designee.

"(4) The Director of the Governor's Policy Office or the Director's designee.

"(5) The Secretary of Environment and Natural Resources or the Secretary's designee.

"(6) Three representatives from the public at large appointed by the Governor.

"SECTION 3. Cochairs. — The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

"SECTION 4. Quorum. — A quorum of the Commission shall consist of nine members.

"SECTION 5. Vacancies. — Any vacancy on the Commission shall be filled by the original appointing authority.

"SECTION 6. Purpose and Duties. — The Commission shall:

"(1) Identify and evaluate the existing sources of State funding for: (i) the public acquisition of land or interests in land to protect drinking water quality and prevent polluted runoff, conserve rivers, wetlands, floodplains, coastal waters, working farms, working forests, local parks, State parks, game lands and other natural areas, urban forests, and land visible from scenic highways in North Carolina; (ii) historic preservation; and (iii) economic and community development tied to land and water conservation and historic preservation.

"(2) Collect research and information from North Carolina and other states and jurisdictions regarding incentive based techniques and management tools used to protect land and water and assess the applicability of such tools and techniques to land conservation in North Carolina.

"(3) Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address funding needs and other issues affecting land and water conservation in North Carolina.

"(4) Hold at least three public meetings, including at least one meeting in the Mountains, Piedmont, and the Coastal Plain region of the State to present the draft report and recommendations to the public and user groups.

"SECTION 7. Expenses of Members. — Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"SECTION 8. Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

"SECTION 9. Consultants. — The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

"SECTION 10. Meetings. — The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"SECTION 11. Report. — The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Commission shall terminate.

"SECTION 12. Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act."

ARTICLE 4.

Protection and Development of Forests; Fire Control.

§ 113-51. Powers of Department of Environment and Natural Resources.

CASE NOTES

Negligence Claim Barred by Public Duty Doctrine. — Denial of the motion to dismiss and for judgment on the pleadings filed by the North Carolina Division of Forest Resources (NCDFR), a division of the North Carolina Department of Environment and Natural Resources (NCDENR), was reversed as the public duty doctrine applied to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against NCDENR for the alleged mismanagement of forest fires; as G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, were designed to protect the citizens of North Carolina as a whole, NCDENR did not owe a specific duty to the administratrix of a decedent killed in a car accident allegedly due to a forest ranger's negligence in managing a forest fire or to the other drivers and owners of cars involved in the accident and their negligence complaints failed to state a claim. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

Public Duty Doctrine Applies. — Public duty doctrine applies to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against North Carolina Department of Environment and Natural Resources (NCDENR) for alleged mismanagement of forest fires; G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, are designed to protect the citizens of North Carolina as a whole. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

§ 113-52. Forest rangers.

CASE NOTES

Negligence Claim Barred by Public Duty Doctrine. — Denial of the motion to dismiss and for judgment on the pleadings filed by the North Carolina Division of Forest Resources (NCDFR), a division of the North Carolina Department of Environment and Natural Resources (NCDENR), was reversed as the public duty doctrine applied to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against NCDENR for the alleged mismanagement of forest fires; as G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, were designed to protect the citizens of North Carolina as a whole, NCDENR did not owe a specific duty to the administratrix of a decedent killed in a car accident allegedly due to a forest ranger's negligence in managing a forest fire or to the other drivers and owners of cars involved in the accident and their negligence complaints failed to state a claim. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

Public Duty Doctrine Applies. — Public duty doctrine applies to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against North Carolina Department of Environment and Natural Resources (NCDENR) for alleged mismanagement of forest fires; G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, are designed to protect the citizens of North Carolina as a whole. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

§ 113-54. Duties of forest rangers; payment of expenses by State and counties.

CASE NOTES

Forest Ranger Was Not a Law Enforcement Officer. — Negligence complaints against the Division of Forest Resources, alleging negligence in failing to extinguish a forest fire which caused smoke and fog to obscure the vision of drivers on a highway, were not barred by the public duty doctrine, because the forest ranger alleged to have been negligent was not a law enforcement officer, as defined by the Tort Claims Act, and no allegations were made that the forest ranger failed to detect and prevent misconduct of others through improper inspections. Myers v. McGrady, 170 N.C. App. 501, 613 S.E.2d 334, 2005 N.C. App. LEXIS 1087 (2005).

Negligence Claim Barred by Public Duty Doctrine. — Denial of the motion to dismiss and for judgment on the pleadings filed by the North Carolina Division of Forest Resources (NCDFR), a division of the North Carolina Department of Environment and Natural Resources (NCDENR), was reversed as the public duty doctrine applied to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against NCDENR for the alleged mismanagement of forest fires; as G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, were designed to protect the citizens of North Carolina as a whole, NCDENR did not owe a specific duty to the administratrix of a decedent killed in a car accident allegedly due to a forest ranger's negligence in managing a forest fire or to the other drivers and owners of cars involved in the accident and their negligence complaints failed to state a claim. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

Public Duty Doctrine Applies. — Public duty doctrine applies to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against North Carolina Department of Environment and Natural Resources (NCDENR) for alleged mismanagement of forest fires; G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, are designed to protect the citizens of North Carolina as a whole. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

§ 113-55. Powers of forest rangers to prevent and extinguish fires; authority to issue citations and warning tickets.

CASE NOTES

Forest Ranger Was Not a Law Enforcement Officer. — Negligence complaints against the Division of Forest Resources, alleging negligence in failing to extinguish a forest fire which caused smoke and fog to obscure the vision of drivers on a highway, were not barred by the public duty doctrine, because the forest ranger alleged to have been negligent was not a law enforcement officer, as defined by the Tort Claims Act, and no allegations were made that the forest ranger failed to detect and prevent misconduct of others through improper inspections. Myers v. McGrady, 170 N.C. App. 501, 613 S.E.2d 334, 2005 N.C. App. LEXIS 1087 (2005).

Negligence Claim Barred by Public Duty Doctrine. — Denial of the motion to dismiss and for judgment on the pleadings filed by the North Carolina Division of Forest Resources (NCDFR), a division of the North Carolina Department of Environment and Natural Resources (NCDENR), was reversed as the public duty doctrine applied to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against NCDENR for the alleged mismanagement of forest fires; as G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, were designed to protect the citizens of North Carolina as a whole, NCDENR did not owe a specific duty to the administratrix of a decedent killed in a car accident allegedly due to a forest ranger's negligence in managing a forest fire or to the other drivers and owners of cars involved in the accident and their negligence complaints failed to state a claim. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

Public Duty Doctrine Applies. — Public duty doctrine applies to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against North Carolina Department of Environment and Natural Resources (NCDENR) for alleged mismanagement of forest fires; G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, are designed to protect the citizens of North Carolina as a whole. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

Article 5A.

Natural Heritage Trust Program.

§ 113-77.6. Definitions.

Editor's Note. — For provisions of Session Laws 2006-223 preamble and ss. 1-12, which created the Land and Water Conservation Study Commission, see notes at G.S. 113-44.15 and G.S. 143-211.

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

Article 13.

Jurisdiction of Conservation Agencies.

§ 113-133.1. Limitations upon local regulation of wildlife resources; certain local acts retained.

(a) The enjoyment of the wildlife resources of the State belongs to all of the people of the State.

(b) The Wildlife Resources Commission is charged with administering the governing statutes in a manner to serve as equitably as may be the various competing interests of the people regarding wildlife resources, considering the interests of those whose livelihood depends upon full and wise use of renewable resources and the interests of the many whose approach is recreational. Thus, except as provided in subsection (e), all special, local, and private acts and ordinances enacted prior to the ratification date of the act creating this section regulating the conservation of wildlife resources are repealed. Nothing in this section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of wildlife resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this Subchapter. In particular, this section does not repeal local acts which restrict hunting primarily for the purpose of protecting travelers on the highway, landowners, or other persons who may be endangered or affected by hunters' weapons or ammunition or whose property may be damaged.

(c) This Subchapter is intended to express State policy relating to the conservation of wildlife resources. Nothing in this section is intended to repeal or prevent the enactment of any city or county ordinance otherwise validly authorized which has only a minor and incidental impact on the conservation of marine and estuarine and wildlife resources. This section does not repeal G.S. 153A-127, G.S. 153A-131, G.S. 160A-182, G.S. 160A-187, and G.S. 160A-188, nor any local act establishing bird sanctuaries, except that local authorities operating bird sanctuaries may not regulate the taking of game or otherwise abrogate valid laws and regulations pertaining to the conservation of wildlife resources.

(d) Nothing in this Subchapter is intended to repeal or abridge the regulatory authority of the Game Commission of Currituck County or the Dare County Game and Wildlife Commission.

(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter

343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522.

(f) The Wildlife Resources Commission is directed to review periodically all local acts affecting conservation of wildlife resources and notify local authorities and the General Assembly as to those that:

(1) Substantially duplicate provisions of this Subchapter.
(2) Seriously conflict with conservation policies set out in this Subchapter.
(3) Seriously conflict with conservation policies developed for the people of this State as a whole by the Wildlife Resources Commission.

(g) Notwithstanding G.S. 113-133.1(b), Chapter 565 of the Session Laws of 1977 is retained in effect. The following local conservation acts which specify that they must be specifically repealed are so repealed: Chapters 434 and 441 of the Session Laws of 1977. To provide for their retention or repeal in accordance with provisions applying to all other local wildlife acts, the following acts are amended to repeal the cited sections: Section 11, Chapter 258, Session Laws of 1969; and Section 4, Chapter 585, Session Laws of 1977. (1979, c. 830, ss. 1, 14; 1979, 2nd Sess., c. 1285, ss. 2, 11; c. 1324, s. 2; 1981, c. 249, s. 2; c. 250, s. 2; 1983, c. 109, s. 2; c. 487, s. 2; 1985, c. 112, s. 1; c. 302, s. 1; c. 689, s. 27; 1986, c. 893, s. 4; 1987, c. 33, s. 4; c. 131, ss. 4, 5; c. 245, s. 2; c. 282, s. 16; 1987 (Reg. Sess., 1988), c. 955, s. 4; 1989, c. 80, s. 2; 1989 (Reg. Sess., 1990), c. 837, s. 2; 1993, c. 65, s. 1; c. 221, s. 3; 1995, c. 509, s. 55; 1997-456, s. 26; 1997-496, s. 18; 2006-21, s. 2; 2006-226, s. 20.)

Effect of Amendments. — Session Laws 2006-21, s. 2, effective June 26, 2006, deleted "Session Laws 1979, Chapter 582" following "Session Laws 1973, Chapter 264" in the provisions pertaining to Perquimans County in subsection (e).

Session Laws 2006-226, s. 20, effective August 10, 2006, deleted "Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636." preceding the entry for Haywood in subsection (e).

ARTICLE 14A.

Coastal and Estuarine Commercial Fishing Licenses.

§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.

(a) The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams.

(b) The Commission may adopt rules to establish gear specific permits to take striped bass from the Atlantic Ocean and to limit the number and type of these permits that may be issued to a person. The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed ten dollars ($10.00) per permit. (1997-400, s. 5.1; 2000-172, s. 6.1; 2001-213, s. 2; 2006-254, s. 1.)

Effect of Amendments. — Session Laws 2006-254, s. 1, effective August 22, 2006, added the subsection (a) designation; and added subsection (b).

Article 14B.

Coastal Recreational Fishing Licenses.

§ 113-174.2. Coastal Recreational Fishing License.

(a) Repealed by Session Laws 2005-455, s. 1.4, effective January 1, 2007.

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. — A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

(b) Repealed by Session Laws 2005-455, s. 1.4, effective January 1, 2007

(c) Types of CRFLs; Fees; Duration. — The Wildlife Resources Commission shall issue the following CRFLs:

(1) Annual Resident CRFL. — $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. — $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

(2) Repealed by Session Laws 2005-455, s. 1.4, effective January 1, 2007.

(3) Repealed by Session Laws 2005-455, s. 1.4, effective January 1, 2007.

(4) Ten-Day Resident CRFL. — $5.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. — $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

(5) Repealed by Session Laws 2005-455, s. 1.4, effective January 1, 2007.

(6) Lifetime CRFLs. — Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee.

a.-d. Repealed by Session Laws 2005-455, s. 1.4, effective January 1, 2007.

e. Infant Lifetime CRFL. — $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. — $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. — $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 65 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. — $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Age 65 Lifetime CRFL. — $15.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. — $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

- k. Resident Totally Disabled CRFL. — $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. — An individual is exempt from the license requirements of G.S. 113-174.1(a) if the individual either:

- (1) Is under 16 years of age.
- (2) Holds any of the following licenses that were purchased prior to January 1, 2006:
  - a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).
  - b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).
  - c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).
  - d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).
  - e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).
  - f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).
  - g. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).
  - h. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).
- (3) Holds any of the following licenses:
  - a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).
  - b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8). (2004-187, s. 2; 2005-455, ss. 1.4, 1.19; 2006-79, s. 1.)

Effect of Amendments. — Session Laws 2006-79, s. 1, effective July 10, 2006, substituted "Resident Age 65" for "Resident Elderly" in subdivision (c)(6)i.

§ 113-174.3. For Hire Blanket CRFL.

(a) License. — A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division for the for hire boat. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. A For Hire Blanket CRFL is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

- (1) Two hundred fifty dollars ($250.00) for a vessel that will carry six or fewer passengers.
- (2) Three hundred fifty dollars ($350.00) for a vessel that will carry greater than six passengers.

(b) Implementation. — Except as provided in this section and G.S. 113-174.2(d), each individual on board a for hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for hire boat is not responsible for the licensure of a customer fishing from the boat. (2005-455, s. 1.5; 2006-255, s. 7; 2006-259, s. 20.5.)

Effect of Amendments. — Session Laws 2006-255, s. 7, effective August 23, 2006, in the introductory language of subsection (a), substituted "Division for the for hire boat" for "Division" at the end of the first sentence, and substituted "A For Hire Blanket CRFL" for "This license" at the beginning of the next to the last sentence.

Session Laws 2006-259, s. 20.5, effective August 23, 2006, rewrote subdivisions (a)(1) and (a)(2).

ARTICLE 16.

Cultivation of Shellfish.

§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.

(a) The Secretary must commence to prepare as expeditiously as possible charts of the waters of North Carolina containing the locations of all oyster and clam leaseholds made by the Department under the provisions of this Article and of all existing leaseholds as they are renewed under the provisions of this Article, the locations of all claims of grant of title to portions of the bed under navigable waters registered with him, and the locations of all areas in navigable waters to which a right of private fishery is claimed and registered with him. Charting or registering any claim by the Secretary in no way implies recognition by the State of the validity of the claim.

(a1) If a claim is based on an oyster or other shellfish grantor a perpetual franchise for shellfish cultivation, the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for part or all of the area claimed. If a claim of exclusive shellfishing rights was registered based upon a conveyance by the Literary Fund, the North Carolina Literary Board or the State Board of Education, and the claimant shows that the area had been cultivated by the claimant or his predecessor in title for the seven-year period prior to registration of the claim, the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for all or part of the area claimed, not to exceed ten acres. A shellfish lease granted under this subsection is subject to the restrictions imposed on shellfish leases in G.S. 113-202, except the prohibition against leasing an area that contains a natural shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed.

(b) In the event of any overlapping of areas leased by the Department, the Secretary shall recommend modification of the areas leased as he deems equitable to all parties. Appeal from the recommendation of the Secretary lies for either party in the same manner as for a lease applicant as to which there is a recommendation of denial or modification of lease. If there is no appeal, or upon settlement of the issue upon appeal, the modified leases must be approved by the Marine Fisheries Commission and reissued by the Secretary in the same manner as initial or renewal leases. Leaseholders must furnish the Secretary surveys of the modified leasehold areas, meeting the requisite criteria for surveys established by the Secretary.

(c) In the event of any overlapping of areas leased by the Department and of areas in which title or conflicting private right of fishery is claimed and registered under the provisions of this Article, the Secretary must give preference to the leaseholder engaged in the production of oysters or clams in commercial quantities who received the lease with no notice of the existence of any claimed grant or right of fishery. To this end, the Secretary shall cause a modification of the claim registered with him and its accompanying survey to exclude the leasehold area. Such modification effected by the Secretary has the effect of voiding the grant of title or right of fishing to the extent indicated.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Department may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Secretary. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the trier of fact shall fix the monetary worth of the claim. The Department may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Department may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Department in such actions may be represented by the Attorney General. In determining the availability of funds to the Department to underwrite the costs of litigation or make condemnation payments, the use which the Department proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) A person who claims that the application of G.S. 113-205 or this section has deprived him of his private property rights in land under navigable waters or his right of fishery in navigable waters without just compensation may file a complaint in the superior court of the county in which the property is located to contest the application of G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the monetary worth of the claim, and the Department may condemn the claim upon payment of this amount to him if the Secretary considers condemnation appropriate and necessary to conserve the marine and estuarine resources of the State. The Department may pay for a condemned claim from available funds. An action under this subsection is considered a condemnation action and is therefore subject to G.S. 7A-248.

The limitation period for an action brought under this subsection is three years. This period is tolled during the disability of the plaintiff. No action, however, may be instituted under this subsection after December 31, 2006.

(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State. (1965, c. 957, s. 2; 1969, c. 44, s. 69; c. 541, s. 11; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1985, c. 279; c. 762; 1989, c. 423, s. 3; c. 727, s. 102; 1989 (Reg. Sess., 1990), c. 869, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 717, ss. 1-3; 1998-179, s. 1; 2006-79, s. 11.)

Effect of Amendments. — Session Laws 2006-79, s. 11, effective July 10, 2006, deleted the second pargraph of subsection (f), including subdivisions (f)(1) through (4).

ARTICLE 19.

Atlantic States Marine Fisheries Compact and Commission.

§ 113-258. (Effective until July 1, 2007) Commission subject to provisions of Executive Budget Act.

The Atlantic States Marine Fisheries Commission of the State of North Carolina shall be subject to all the terms and provisions of the Executive

G.S. 113-258 is set out twice. See notes.

Budget Act, Article 1 of Chapter 143 of the General Statutes of North Carolina. (1949, c. 1086, s. 7; 1955, c. 236, s. 1; 1965, c. 957, s. 18.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as in effect until July 1, 2007, see the following section, also numbered G.S. 113-258.

§ 113-258. (Effective July 1, 2007) Commission subject to provisions of State Budget Act.

The Atlantic States Marine Fisheries Commission of the State of North Carolina shall be subject to all the terms and provisions of the State Budget Act, Chapter 143C of the General Statutes of North Carolina. (1949, c. 1086, s. 7; 1955, c. 236, s. 1; 1965, c. 957, s. 18; 2006-203, s. 27.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 113-258.

Editor's Note. — Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 27, effective July 1, 2007, and applicable to to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act" for "Executive Budget Act" in the section heading; and substituted "State Budget, Chapter 143C" for "Executive Budget Act, Article 1 of Chapter 143".

ARTICLE 21.

Licenses and Permits Issued by the Wildlife Resources Commission.

§ 113-270.3. Special activity licenses; big game kill reports.

(a) In addition to any hunting, trapping, or fishing license that may be required pursuant to G.S. 113-270.1B(a), individuals engaging in specially regulated activities must have the appropriate special activity license prescribed in this section before engaging in the regulated activity.

(b) The special activity licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Big Game Hunting License — $10.00. This license shall be issued only to an individual resident of the State and entitles the holder to take big game by all lawful methods and during all open seasons.

(1a) Nonresident Bear/Wild Boar Hunting License — $125.00. This license is valid for use only by an individual within the State and must be procured before taking any bear or wild boar within the State. Notwithstanding any other provision of law, a nonresident individual may not take any bear or wild boar within the State without procuring this license; provided, that those persons who have a nonresident lifetime sportsman combination license purchased prior to May 24, 1994, shall not have to purchase this license.

(2) Nonresident Big Game Hunting License. This license shall be issued only to an individual nonresident of the State and entitles the holder

to take big game by all lawful methods and during all open seasons. The nonresident big game hunting licenses issued by the Wildlife Resources Commission are:

a. Season License — $60.00.

b. Six-Day License — $40.00. This license is only valid for the six consecutive dates indicated on the license.

(3) Game Land License — $15.00. This license shall be issued to an individual resident or nonresident of the State and entitles the holder to hunt and trap on game lands managed by the Wildlife Resources Commission. The Wildlife Resources Commission may, pursuant to G.S. 113-264(a), designate in its rules other activities on game lands that require purchase of this license and may charge additional fees for use of specially developed facilities.

(4) Falconry License — $10.00. This license shall be issued to an individual resident or nonresident of the State and must be procured before:

a. Taking, importing, transporting, or possessing a raptor; or

b. Taking wildlife by means of falconry.

The Wildlife Resources Commission may issue classes of falconry licenses necessary to participate in the federal/State permit system, require necessary examinations before issuing licenses or permits to engage in various authorized activities related to possession and maintenance of raptors and the sport of falconry, and regulate licenses as required by governing federal law and rules. To defray the costs of administering required examinations, the Wildlife Resources Commission may charge reasonable fees upon giving them. To meet minimum federal standards plus other State standards in the interests of conservation of wildlife resources, the Wildlife Resources Commission may impose all necessary controls, including those set out in the sections pertaining to collection licenses and captivity licenses, and may issue permits and require reports, but no collection license or captivity license is needed in addition to the falconry license.

(5) Migratory Waterfowl Hunting License — $10.00. This license shall be issued to an individual resident or nonresident of the State and entitles the holder to take migratory waterfowl in accordance with applicable laws and regulations. The Wildlife Resources Commission may implement this license requirement through the sale of an official waterfowl stamp which may be a facsimile, in an appropriate size, of the waterfowl conservation print authorized by G.S. 113-270.2B. An amount not less than one-half of the annual proceeds from the sale of this license shall be used by the Commission for cooperative waterfowl habitat improvement projects through contracts with local waterfowl interests, with the remainder of the proceeds to be used by the Commission in its statewide programs for the conservation of waterfowl.

(c) Any individual who kills any species of big game must report the kill to the Wildlife Resources Commission. The Commission may by rule prescribe the method of making the report, prescribe its contents, and require positive identification of the carcass of the kill, by tagging or otherwise. The Wildlife Resources Commission may administratively provide for the annual issuance of big game tags or other identification for big game authorized by this section to holders of lifetime sportsman licenses and lifetime comprehensive hunting licenses.

(d) Any individual who possesses any of the lifetime sportsman licenses established by G.S. 113-270.1D(b) may engage in specially regulated activities without the licenses required by subdivisions (1), (2), (3), and (5) of subsection

(b) of this section. Any individual possessing an annual sportsman license established by G.S. 113-270.1D(a) or a lifetime or annual comprehensive hunting license established by G.S.113-270.2(c)(2) or (5) may engage in specially regulated activities without the licenses required by subdivisions (1), (3), and (5) of subsection (b) of this section.

(e) When the Wildlife Resources Commission establishes a primitive weapons season pursuant to G.S. 113-291.2(a), all of the combination hunting and fishing licenses established in G.S.113-270.1C, sportsman licenses established in G.S. 113-270.1D, and hunting licenses established in G.S. 113-270.2(c)(1), (2), (3), (5), and (6) entitle the holder to participate. For purposes of this section, "primitive weapons" include bow and arrow, muzzle-loading firearm, and any other primitive weapon specified in the rules of the Wildlife Resources Commission. (1969, c. 1042, s. 7; 1973, c. 1097, s. 1; 1975, c. 171; c. 197, ss. 5, 7; c. 673, s. 1; 1977, c. 746, s. 1; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1178, ss. 2, 5; 1981, c. 482, s. 7; c. 620, s. 1; 1981 (Reg. Sess., 1982), c. 1201, s. 2; 1983, c. 140, ss. 2-3; 1987, c. 156, ss. 3-5; c. 452, ss. 2, 3; c. 745, s. 2; c. 827, s. 98; 1991, c. 671, s. 1; 1993 (Reg. Sess., 1994), c. 557, s. 2; 1993 (Reg. Sess., 1994), c. 684, s. 3; 1999-339, s. 6; 2001-91, s. 3; 2006-226, s. 21.)

Effect of Amendments. — Session Laws 2006-226, s. 21, effective August 10, 2006, substituted "subdivisions (1), (3), and (5)" for "subdivisions (1) and (3)" near the end of subsection (d).

§ 113-271. Hook-and-line licenses in inland and joint fishing waters.

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License — $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License — $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License — $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the licensee.

(4) Resident County Inland Fishing License — $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the licensee.

(5) Nonresident State Inland Fishing License — $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident 10-day Inland Fishing License — $5.00. This license shall be issued only to a resident of the State.

b. Nonresident 10-day Inland Fishing License — $10.00. This license shall be issued only to a nonresident of the State.
c. Repealed by Session Laws 2005-455, s. 1.8, effective January 1, 2007.

(6a) Age 65 Resident Lifetime Inland Fishing License — $15.00. This license shall be issued only to an individual resident of the State who is at least 65 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License — $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License — $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

(7), (8) Repealed by Session Laws 2005-455, s. 1.8, effective January 1, 2007.

(9) Special Landholder and Guest Fishing License — $50.00. This license shall be issued only to the landholder of private property bordering inland or joint fishing waters. This license shall entitle the landholder and guests of the landholder to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. This license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines. This license is not transferable as to person or location. For purposes of this subdivision, a guest is any individual invited by the landholder to fish from the property at no charge. A charge includes any fee, assessment, dues, rent, or other consideration which must be paid, whether directly or indirectly, in order to be allowed to fish from the property, regardless of the stated reason for such charge. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s. 2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2; 1969, c. 761; c. 1042, s. 9; 1973, c. 476, s. 143; c. 504; 1975, c. 197, s. 15; 1979, c. 737, ss. 1, 2; c. 748, s. 6; c. 830, s. 1; 1979, 2nd Sess., c. 1178, ss. 3, 5; 1981, c. 482, s. 5; 1981 (Reg. Sess., 1982), c. 1201, s. 5; 1983, c. 140, s. 6; 1987, c. 156, ss. 8, 9; c. 827, s. 98; 1989 (Reg. Sess., 1990), c. 909, s. 2; c. 926; 1993 (Reg. Sess., 1994), c. 684, s. 4; 1995, c. 535, s. 6.1; 1997-443, s. 11A.118(a); 1999-456, s. 28.; 2005-455, s. 1.8; 2006-255, s. 8.)

Effect of Amendments. —

Session Laws 2006-255, s. 8, effective August 23, 2006, in subdivision (d)(9), inserted "Landholder and" near the beginning of the subdivision catchline, substituted "landholder" for "owner or lessee" near the beginning of the first sentence, substituted "waters. This license shall entitle the landholders and guests of the landholder" for "waters, including public mountain trout waters, and entitles persons" near the end of the first sentence, substituted "This license" for "The guest fishing license" at the beginning of the fourth sentence, substituted "This" for "The guest fishing" at the beginning of the first sentence, and added the last two sentences.

§ 113-272.3. Special provisions respecting fishing licenses; grabbling; taking bait fish; use of landing nets; lifetime licenses issued from Wildlife Resources Commission headquarters; personalized lifetime sportsman combination licenses.

(a) The Wildlife Resources Commission by rule may define the meaning of "hook and line" and "special device" as applied to fishing techniques. Any technique of fishing that may be lawfully authorized which employs neither the use of any special device nor hook and line must be pursued under the appropriate hook-and-line fishing license.

(b) In accordance with established fishing customs and the orderly conservation of wildlife resources, the Wildlife Resources Commission may by rule provide for use of nets or other special devices which it may authorize as an incident to hook-and-line fishing or for procuring bait fish without requiring a special device license. In this instance, however, the individual fishing must meet applicable hook-and-line license requirements.

(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the licensee.

(d) In issuing lifetime licenses, the Wildlife Resources Commission is authorized to adopt rules to establish a personalized series for certain license types and to charge a five dollar ($5.00) administrative fee, to be deposited in the Wildlife Fund, to defray the cost of issuance of the personalized license. (1979, c. 830, s. 1; 1981, c. 482, s. 8; c. 620, s. 3; 1987, c. 827, s. 98; 1993 (Reg. Sess., 1994), c. 684, s. 6.1; 2005-455, s. 1.9; 2006-255, s. 9.)

Effect of Amendments. — Session Laws 2006-255, s. 9, effective August 23, 2006, in subsection (d), deleted "sportsman combination" preceding "licenses" near the beginning, and inserted "for certain license types" near the middle.

ARTICLE 23C.

North Carolina Seafood Industrial Park Authority.

§ 113-315.31. Issuance of bonds.

(a) **(Effective until July 1, 2007)** As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized at one time or from time to time to issue with the approval of the Governor negotiable revenue bonds of the Authority. The principal and interest of revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities. Prior to taking any action under this subsection, the Governor may consult with the Advisory Budget Commission.

(a) **(Effective July 1, 2007)** As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized at one time or from time to time to issue with the approval of the Governor negotiable revenue bonds of the Authority. The principal and interest of revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(b) A pledge of the net revenues derived from the operation of said properties and facilities, all or any of them, shall be made to secure the payment of said bonds as and when they mature.

(c) Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(d) Such bonds and the income thereof shall be exempt from all taxation within the State.

(e) Notwithstanding any other provisions of this Article, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the act upon request of the Authority and with the approval of the Governor after receiving the advice of the Local Government Commission. The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this Article. The North Carolina Seafood Industrial Park Authority shall determine when a bond issue is indicated. The Authority shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys. (1979, c. 459, s. 7; 1983, c. 577, s. 2; 1985 (Reg. Sess., 1986), c. 955, ss. 13, 14; 2006-203, s. 28.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2007. The second version of subsection (a) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 28, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last sentence in subsection (a), which read "Prior to taking action under this subsection, the Governor may consult with the Advisory Budget Commission."

ARTICLE 25A.

Unified Licenses.

§ 113-351. Unified hunting and fishing licenses; subsistence license waiver.

(a) Definitions. — The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses and Waivers. — The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses and waivers issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. — The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. — $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. — $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. — Except as provided in sub-subdivision f. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters; and to engage in recreational fishing in coastal fishing waters.

a. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. — $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. — $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. — $675.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 65 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. — $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Age 65 Lifetime Unified Sportsman/Coastal Recreational Fishing License. — $30.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. — $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. — $110.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. — Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

a. Resident Lifetime Unified Inland/Coastal Recreational Fishing License. — $450.00.

b. Resident Legally Blind Lifetime Unified Inland/Coastal Recreational Fishing License. — No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

c. Resident Adult Care Home Lifetime Unified Inland/Coastal Recreational Fishing License. — No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver. — A county department of social services shall issue a Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver to an individual who receives benefits from Medicaid, Food Stamps, or Work First Family Assistance through the county department of social services and who requests a waiver. This waiver shall be issued at no charge. This waiver is valid for a period of one year from the date of issuance. This waiver shall be issued only to an individual who is a resident of the State. This waiver authorizes the waiver holder to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters. County departments of social services shall supply the Wildlife Resources Commission with the name, mailing address, and telephone number of each individual who receives a waiver. (2005-455, s. 1.16; 2006-79, s. 2; 2006-255, s. 10.)

Effect of Amendments. — Session Laws 2006-79, s. 2, effective July 10, 2006, substituted “Resident Age 65” for “Resident Elderly” in subdivision (c)(3)e.

Session Laws 2006-255, s. 10, effective August 23, 2006, added “Resident” at the beginning of subdivision (c)(4)a.

Chapter 113A.

Pollution Control and Environment.

Article 1.

Environmental Policy Act.

Sec.
113A-4. Cooperation of agencies; reports; availability of information.

Article 4.

Sedimentation Pollution Control Act of 1973.

113A-54.1. Approval of erosion control plans.
113A-56. Jurisdiction of the Commission.
113A-57. Mandatory standards for land-disturbing activity.
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Article 7.

Coastal Area Management.

Part 4. Permit Letting and Enforcement.

113A-126. Injunctive relief and penalties.

Article 12.

Primary Forest Product Assessment Act.

Sec.
113A-193. Duties of Secretaries.

Article 18.

Clean Water Management Trust Fund.

113A-252. Definitions.
113A-253.1. (Effective July 1, 2007) The Clean Water Management Trust Fund; appropriation.
113A-254. Grant requirements.
113A-255. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.

ARTICLE 1.

Environmental Policy Act.

§ 113A-4. Cooperation of agencies; reports; availability of information.

The General Assembly authorizes and directs that, to the fullest extent possible:

(1) The policies, rules, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and

(2) Every State agency shall include in every recommendation or report on any action involving expenditure of public moneys or use of public land for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:

a. The environmental impact of the proposed action;
b. Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;
c. Mitigation measures proposed to minimize the impact;
d. Alternatives to the proposed action;
e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity; and
f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

(2a) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved. Any unit of local government or other interested party that may be adversely affected by the proposed action may submit written comment. The responsible official shall consider written comment from units of local government and interested parties that is received within the established comment period. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Secretary of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.

(3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, and the School of Government at the University of North Carolina at Chapel Hill. (1971, c. 1203, s. 4; 1987, c. 827, s. 125; 1991, c. 431, s. 2; 1991 (Reg. Sess., 1992), c. 945, s. 2; 2006-264, s. 29(g).)

Effect of Amendments. — Session Laws 2006-264, s. 29(g), effective August 27, 2006, substituted "School of Government at the University of North Carolina at Chapel Hill" for "Institute of Government" at the end of subdivision (3).

ARTICLE 4.

Sedimentation Pollution Control Act of 1973.

§ 113A-54.1. Approval of erosion control plans.

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion and sedimentation control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require any revision of the plan that is necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan.

(c) The Commission shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Director of the Division of Land Resources may disapprove an erosion and sedimentation control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion and sedimentation control plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record may be considered for only the two years prior to the application date.

(e) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1. (1989, c. 676, s. 2; 1993 (Reg. Sess., 1994), c. 776, s. 4; 1998-221, s. 1.11(a); 1999-379, s. 1; 2005-386, s. 7.1; 2006-250, s. 1.)

Effect of Amendments. —

Session Laws 2006-250, s. 1, effective September 1, 2006, added subsection (e).

§ 113A-56. Jurisdiction of the Commission.

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

(1) Conducted by the State.
(2) Conducted by the United States.
(3) Conducted by persons having the power of eminent domain other than a local government.
(4) Conducted by a local government.
(5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to a delegated erosion and sedimentation control program:

(1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the Commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.
(2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action. (1973, c. 392, s. 7; c. 1417, s. 4; 1987, c. 827, s. 130; 1987 (Reg. Sess., 1988), c. 1000, s. 4; 2002-165, s. 2.5; 2006-250, s. 2.)

Effect of Amendments. — Session Laws 2006-250, s. 2, effective September 1, 2006, added "other than a local government" at the end of subdivision (a)(3); in subsection (c), inserted "that administer a delegated erosion and sedimentation control program" in the first sentence, added the second sentence, and added subdivisions (c)(1) and (c)(2); and made minor stylistic changes.

§ 113A-57. Mandatory standards for land-disturbing activity.

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply

to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(2) The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.

(3) Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.

(4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for the activity is filed with the agency having jurisdiction and approved by the agency. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program, and the land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The agency having jurisdiction shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. (1973, c. 392, s. 8; c. 1417, s. 5; 1975, c. 647, s. 2; 1979, c. 564; 1983 (Reg. Sess., 1984), c. 1014, s. 3; 1987, c. 827, s. 131; 1989, c. 676, s. 3; 1991, c. 275, s. 2; 1998-99, s. 1; 1999-379, s. 2; 2002-165, s. 2.6; 2005-386, s. 7.2; 2005-443, s. 2; 2006-255, s. 2; 2006-264, s. 53(a).)

Editor's Note. —

Session Laws 2006-264, s. 53(a), added a subdivision (5) identical to that added by Session Laws 2006-255, s. 2, but was repealed pursuant to the terms of Session Laws 2006-264, s. 53(b), which provided that if Session Laws 2006-255 became law, 2006-264, s. 53 is repealed.

Effect of Amendments. —

Session Laws 2006-255, s. 2, effective August 23, 2006, added subdivision (5).

§ 113A-60. Local erosion and sedimentation control programs.

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this

Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars ($100.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs.

(e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1. (1973, c. 392, s. 11; 1993 (Reg. Sess., 1994), c. 776, s. 7; 2002-165, s. 2.8; 2006-250, s. 3.)

Effect of Amendments. — Session Laws 2006-250, s. 3, effective September 1, 2006, inserted the second sentence in subsection (a); and added subsections (d) and (e).

ARTICLE 7.

Coastal Area Management.

Part 1. Organization and Goals.

§ 113A-102. Legislative findings and goals.

CASE NOTES

Cited in Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

Part 4. Permit Letting and Enforcement.

§ 113A-126. Injunctive relief and penalties.

(a) Upon violation of any of the provisions of this Article or of any rule or order adopted under the authority of this Article the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the State upon the relation of the Secretary for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(b) Upon violation of any of the provisions of this Article relating to permits for minor developments issued by a local government, or of any rule or order adopted under the authority of this Article relating to such permits, the designated local official may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the affected local government upon the relation of the designated local official for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(c) Any person who shall be adjudged to have knowingly or willfully violated any provision of this Article, or any rule or order adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates, any such provision, rule or order after written notice from the Secretary or (in the case of a permit for a minor development issued by a local government) written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

(d)(1) A civil penalty of not more than one thousand dollars ($1,000) for a minor development violation and ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:
- a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
- b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
- c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
- d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

(3) The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.

(4) In determining the amount of the civil penalty, the Commission shall consider the following factors:
- a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;

b. The duration and gravity of the violation;
c. The effect on water quality, coastal resources, or public trust uses;
d. The cost of rectifying the damage;
e. The amount of money saved by noncompliance;
f. Whether the violation was committed willfully or intentionally;
g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and
h. The cost to the State of the enforcement procedures.

(4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less.

(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 485, ss. 1-3; c. 518, s. 6; 1987, c. 827, ss. 11, 143; 1991, c. 725, s. 6; 1991 (Reg. Sess., 1992), c. 839, s. 3; c. 890, s. 8; 1993, c. 539, s. 874; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 53(a); 2006-229, s. 1.)

Effect of Amendments. — Session Laws 2006-229, s. 1, effective December 1, 2006, and applicable to violations and offenses committed on or after that date, in the introductory paragraph of subdivision (d)(1), substituted "one thousand dollars ($1,000)" for "two hundred fifty dollars ($250.00)" near the beginning, and substituted "ten thousand dollars ($10,000)" for "two thousand five hundred dollars ($2,500)" near the middle; in subdivision (d)(3), deleted the former first sentence which read: "The Commission may assess the penalties provided for in this subsection." and inserted "or investigative costs" in the the middle of the first sentence, in the second sentence, inserted "the assessment of," and inserted "or investigative costs," and in the third sentence, substituted "any civil penalty or investigative cost assessed under this subsection" for "a penalty"; rewrote subdivision (d)(4); and added subdivision (d)(4a).

ARTICLE 12.

Primary Forest Product Assessment Act.

§ 113A-193. Duties of Secretaries.

(a) The Secretary, Department of Revenue, shall:
(1) Develop the necessary administrative procedures to collect the assessment;
(2) Collect the assessment from the primary forest product processors;
(3) Deposit funds collected from the assessment in the Forest Development Fund;
(4) Audit the records of processors to determine compliance with the provisions of this Article.

(b) **(Effective until July 1, 2007)** The Secretary of Environment and Natural Resources shall:
(1) Provide to the Secretary, Department of Revenue, lists of processors subject to the assessment;

G.S. 113A-193(b) is set out twice. See note.

(2) Advise the Secretary, Department of Revenue, of the appropriate methods to convert measurements of primary forest products by other systems to those authorized in this Article;

(3) Establish in November prior to those sessions in which the General Assembly considers the State budget, the estimated total assessment that will be collectible in the next budget period and so inform the Advisory Budget Commission and the General Assembly;

(4) Within 30 days of certification of the State budget, notify the Secretary, Department of Revenue, of the need to collect the assessment for those years covered by the approved budget.

(5) By January 15 of each odd-numbered year, report to the General Assembly on the number of acres reforested, type of owners assisted, geographic distribution of funds, the amount of funds encumbered and other matters. The report shall include the information by forestry district and statewide and shall be for the two fiscal years prior to the date of the report.

(b) **(Effective July 1, 2007)** The Secretary of Environment and Natural Resources shall:

(1) Provide to the Secretary, Department of Revenue, lists of processors subject to the assessment;

(2) Advise the Secretary, Department of Revenue, of the appropriate methods to convert measurements of primary forest products by other systems to those authorized in this Article;

(3) Establish in November prior to those sessions in which the General Assembly considers the State budget, the estimated total assessment that will be collectible in the next budget period and so inform the General Assembly;

(4) Within 30 days of certification of the State budget, notify the Secretary, Department of Revenue, of the need to collect the assessment for those years covered by the approved budget.

(5) By January 15 of each odd-numbered year, report to the General Assembly on the number of acres reforested, type of owners assisted, geographic distribution of funds, the amount of funds encumbered and other matters. The report shall include the information by forestry district and statewide and shall be for the two fiscal years prior to the date of the report.

(c) The Secretary of Revenue shall be reimbursed for those actual expenditures incurred as a cost of collecting the assessment for the Forest Development Fund. This amount shall be transferred from the Forest Development Fund in equal increments at the end of each quarter of the fiscal year to the Department of Revenue. This amount shall not exceed five percent (5%) of the total assessments collected on primary forest products during the preceding fiscal year. (1977, c. 573, s. 5; c. 771, s. 4; 1983, c. 761, s. 120; 1985, c. 526; 1989, c. 727, s. 218(76); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a); 2006-203, s. 29.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2007. The second version of subsection (b) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 29, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "Advisory Budget Commission and the" preceding "General Assembly" near the end of subdivision (b)(3).

ARTICLE 18.

Clean Water Management Trust Fund.

§ 113A-251. Purpose.

Editor's Note. —
For provisions of Session Laws 2006-223 preamble and ss. 1-12, which created the Land and Water Conservation Study Commission, see notes at G.S. 113-44.15 and G.S. 143-211.

§ 113A-252. Definitions.

The following definitions apply in this Article:

(1) Council. — The advisory council for the Clean Water Management Trust Fund.
(2) Economically distressed local government unit. — An economically distressed county, as defined in G.S. 143B-437.01, or a local government unit located in that county.
(3) Fund. — The Clean Water Management Trust Fund created pursuant to this Article.
(4) Land. — Real property and any interest in, easement in, or restriction on real property.
(4a) Local government unit. — Defined in G.S. 159G-20.
(4b) Stormwater quality project. — Defined in G.S. 159G-20.
(5) Trustees. — The trustees of the Clean Water Management Trust Fund.
(6) Wastewater collection system. — Defined in G.S. 159G-20.
(7) Wastewater treatment works. — Defined in G.S. 159G-20. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2003-340, s. 1.3; 2005-454, s. 4; 2006-252, s. 2.13.)

Effect of Amendments. —
Session Laws 2006-252, s. 2.13, effective January 1, 2007, substituted "G.S. 143B-437.01" for "G.S. 105-129.3" in subdivision (2).

§ 113A-253.1. (Effective July 1, 2007) The Clean Water Management Trust Fund; appropriation.

(a) The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted, it is imperative that the State provide a minimum of one hundred million dollars ($100,000,000) each calendar year to the Clean Water Management Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of one hundred million dollars ($100,000,000).

(b) The funds in the Clean Water Management Trust Fund shall be used only in accordance with this Article. (1996, 2nd Ex. Sess., c. 18, s. 27.6(b); 1997-443, s. 7.9(a); 2000-67, ss. 7.7(b)-(d); 2001-474, s. 26; 2006-203, s. 5(a), (b).)

Editor's Note. — This section was formerly G.S. 143-15.3B. It was recodified as G.S. 113A-253.1 pursuant to Session Laws 2006-203, s. 5(a), effective July 1, 2007.

Session Laws 2006-203, s. 126 provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 5(b), effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the first sentence of subsection (a), which read "The Clean Water Management Trust Fund is established in G.S. 113A-253."; and substituted "this Article" for "Article 18 of Chapter 113A of the General Statutes" at the end of subsection (b).

§ 113A-254. Grant requirements.

(a) Eligible Applicants. — Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

(1) A State agency.
(2) A local government unit.
(3) A nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of our State's environmental and natural resources.

(a1) Criteria. — The criteria developed by the Trustees under G.S. 113A-256 apply to grants made under this Article. The common criteria for water projects set in G.S. 159G-23 and the criteria set out in this section also apply to wastewater collection system projects, wastewater treatment works projects, and stormwater quality projects. An application for a wastewater collection system project or a wastewater treatment works project that serves an economically distressed local government unit has priority.

(b) Matching Requirement. — The Board of Trustees shall establish matching requirements for grants awarded under this Article. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(c) Restriction. — No grant shall be awarded under this article to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S. 143-214.11.

(d) Wastewater Limits. — A wastewater collection system project or a wastewater treatment works project is eligible for a grant under this Article only if it is a high-unit-cost project, as defined in G.S. 159G-20. A grant made under this Article for a wastewater collection system project or a wastewater treatment works project is subject to the cost limits and recipient limits set in G.S. 159G-36 for a grant awarded from the Wastewater Reserve.

(e) Stormwater Limits. — The amount of a grant awarded under this Article for a stormwater quality project may not exceed the construction costs of the project. The total amount of grants awarded under this Article to the same recipient for stormwater quality projects for a fiscal year may not exceed the limit set in G.S. 159G-36(c)(1) for grants to the same recipient from the Wastewater Reserve.

(f) Withdrawal. — An award of a grant under this Article is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of the award, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a date by which the recipient must take action or forfeit the grant. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2003-340, s. 1.3; 2005-454, s. 6; 2006-178, s. 1.)

Effect of Amendments. —

Session Laws 2006-178, s. 1, effective retroactively to January 1, 2006 and not applicable to any person who is a member of the Board of Trustees of the Clean Water Management Trust Fund on June 30, 2006, deleted the former third sentence in subsection (a1), which read: "The common criteria set in G.S. 159G-23 have priority over the criteria set under this Article for wastewater collection system projects, wastewater treatment works projects, and stormwater quality projects."; and deleted the former second sentence of subsection (b), which read: "The Board of Trustees may require a match of up to twenty percent (20%) of the amount of the grant awarded."

§ 113A-255. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.

(a) Board of Trustees Established. — There is established the Clean Water Management Trust Fund Board of Trustees. The Clean Water Management Trust Fund Board of Trustees shall be administratively located within the Department of Environment and Natural Resources but shall be independent of the Department.

(b) Membership. — The Clean Water Management Trust Fund Board of Trustees shall be composed of 21 members appointed to four-year terms as follows:

(1) One member appointed by the Governor to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by four.

(2) One member appointed by the Governor to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by four.

(3) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(4) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(5) One member appointed by the Governor to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by four.

(6) One member appointed by the Governor to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(7) One member appointed by the Governor to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(8) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by four.

(9) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by four.

(10) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that are evenly divisible by four.

(11) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by four.

(12) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by four.

(13) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(14) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(15) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by four.

(16) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that are evenly divisible by four.

(17) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that are evenly divisible by four.

(18) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by four.

(19) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by four.

(20) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(21) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(b1) Qualifications. — The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution. Persons appointed shall be knowledgeable in at least one of the following areas:

(1) Acquisition and management of natural areas.
(2) Conservation and restoration of water quality.
(3) Wildlife and fisheries habitats and resources.
(4) Environmental management.

(b2) Limitation on Length of Service. — No member of the Board of Trustees shall serve more than two consecutive four-year terms or a total of 10 years.

(c) Chair. — The Governor shall appoint one member to serve as Chair of the Board of Trustees.

(d) Vacancies. — An appointment to fill a vacancy on the Board of Trustees created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(e) Frequency of Meetings. — The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(e1) Quorum. — A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(f) Per Diem and Expenses. — Each member of the Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund.

(g) Meeting Facilities. — The Secretary of Environment and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Chair. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 1997-443, s. 11A.119(a); 2001-474, s. 10; 2003-340, s. 1.3; 2003-422, s. 1; 2006-178, s. 2.)

Effect of Amendments. — Session Laws 2006-178, s. 2, effective retroactively to July 1, 2006 and not applicable to any person who is a member of the Board of Trustees of the Clean Water Management Trust Fund on June 30, 2006, added subsection (b2).

Chapter 114.

Department of Justice.

Article 4.

State Bureau of Investigation.

Part 2. Criminal History Record Checks.

Sec.
114-19.16. Criminal record checks for the North Carolina State Lottery Commission and its Director.
114-19.18. Criminal record checks of applicants for licensure and licensees.
114-19.19. Criminal record checks for the Judicial Department.

ARTICLE 1.

Attorney General.

§ 114-2. Duties.

Cross References. — As to service standards and requirements, see G.S. 66-356.

ARTICLE 4.

State Bureau of Investigation.

Part 2. Criminal History Record Checks.

§ 114-19.16. Criminal record checks for the North Carolina State Lottery Commission and its Director.

The Department of Justice may provide to the North Carolina State Lottery Commission and to its Director from the State and National Repositories of Criminal Histories the criminal history of any prospective employee of the Commission and any prospective lottery vendor. The North Carolina State Lottery Commission or its Director shall provide to the Department of Justice, along with the request, the fingerprints of the prospective employee of the Commission, or of the prospective lottery vendor, a form signed by the prospective employee of the Commission, or of the prospective vendor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the prospective employee of the Commission, or prospective lottery vendor, shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The North Carolina State Lottery Commission and its Director shall remit any fingerprint information retained by the Commission to alcohol law enforcement agents appointed under Article 5 of Chapter 18B of the General Statutes and shall keep all information obtained pursuant to this section confidential. The Department of Justice shall charge a reasonable fee only for conducting the checks of the criminal history records authorized by this section. (2005-344, s. 6; 2005-276, s. 31.1(w); 2006-259, s. 8(g); 2006-264, s. 91(c).)

Editor's Note. — Session Laws 2006-264, s. 91(c), made a change identical to that made by Session Laws 2006-259, s. 8(g), but was repealed pursuant to the terms of Session Laws 2006-264, s. 91(e), which provided that if Session Laws 2006-259 became law, 2006-264, s. 91(c) is repealed.

Effect of Amendments. — Session Laws 2006-259, s. 8(g), effective August 23, 2006, deleted "national" preceding "criminal" near the end of the last sentence.

§ 114-19.18. Criminal record checks of applicants for licensure and licensees.

The Department of Justice may provide to the North Carolina Psychology Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license to practice psychology or a licensed psychologist or psychological associate under Article 18A of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge each applicant or licensee a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information. (2006-175, s. 3; 2006-259, s. 42.)

Editor's Note. — Session Laws 2006-175, s. 4, made this section effective August 1, 2006.

Session Laws 2006-175, s. 3 enacted this section as G.S. 114-19.16. It was recodified as G.S. 114-19.18 by Session Laws 2006-259, s. 42.

§ 114-19.19. Criminal record checks for the Judicial Department.

(a) The Department of Justice may provide to the Judicial Department from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee, volunteer, or contractor of the Judicial Department. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, volunteer, or contractor, a form signed by the current or prospective employee, volunteer, or contractor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the current or prospective employee, volunteer, or contractor shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information. (2006-187, s. 3(a); 2006-259, s. 42.)

Editor's Note. —

Session Laws 2006-187, s. 13, made this section effective October 1, 2006.

This Section was enacted as G.S. 114-19.16 by Session Laws 2006-187, s.3(a), and was recodified as G.S. 114-19.19 by Session Laws 2006-259, s. 42.

Chapter 115B.

Tuition Waivers.

§ 115B-1. Definitions.

CASE NOTES

Applied in Myers v. McGrady, 170 N.C. App. 501, 613 S.E.2d 334, 2005 N.C. App. LEXIS 1087 (2005).

Chapter 115C.

Elementary and Secondary Education.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

Article 2.

State Board of Education.

Sec.
115C-12. Powers and duties of the Board generally.

Article 5.

Local Boards of Education.

115C-47. Powers and duties generally.
115C-50. Training of board members.

SUBCHAPTER IV. EDUCATION PROGRAM.

Article 8.

General Education.

Part 1. Courses of Study.

115C-81. Basic Education Program.
115C-84.2. School calendar.

Article 8B.

School-Based Management and Accountability Program.

Part 2. School-Based Management.

115C-105.25. Budget flexibility.
115C-105.26. Waivers of State laws, rules, or policies.
115C-105.27. Development and approval of school improvement plans.

Article 9.

Education of Children With Disabilities.

Part 1. State Policy.

115C-106. [Repealed.]

Part 1A. General Provisions.

115C-106.1. State goal.
115C-106.2. Purposes.
115C-106.3. Definitions.
115C-107. [Repealed.]

Part 1B. Provision of Free Appropriate Public Education.

115C-107.1. Free appropriate public education; ages.

Sec.
115C-107.2. Duties of State Board of Education.
115C-107.3. Child find.
115C-107.4. Monitoring and enforcement.
115C-107.5. Annual reports.
115C-107.6. Duties of local educational agencies.
115C-107.7. Discipline.
115C-108. [Repealed.]

Part 1C. Interagency Coordination.

115C-108.1. State Board lead agency.
115C-108.2. Interlocal cooperation.
115C-109. [Repealed.]

Part 1D. Procedural Safeguards.

115C-109.1. Handbook for parents.
115C-109.2. Adult children with disabilities; surrogate parents.
115C-109.3. Access to records; opportunity for parents to participate in meetings.
115C-109.4. Mediation.
115C-109.5. Prior written notice.
115C-109.6. Impartial due process hearings.
115C-109.7. Resolution session.
115C-109.8. Procedural issues.
115C-109.9. Review by review officer; appeals.
115C-110. [Repealed.]

Part 1E. Special Education and Related Services Personnel.

115C-110.1. Teacher qualifications.
115C-110.2. Interpreters/transliterators.
115C-111. [Repealed.]

Part 1F. Budgeting; Funds.

115C-111.1. Out-of-state students; eligibility for State funds.
115C-111.2. Contracts with private service providers.
115C-111.3. Cost of education of children in group homes, foster homes, etc.
115C-111.4. Nonreduction.
115C-111.5. Allocation of federal funds.
115C-111.6. Obligation to provide services for preschool children with disabilities.
115C-112. [Repealed.]

Part 1G. Council on Educational Services for Exceptional Children.

115C-112.1. Establishment; organization; powers and duties.

Part 2. Nondiscrimination in Education.

Sec.
115C-113 through 115C-115. [Repealed.]

Part 3. Appeals.

115C-116. [Repealed.]

Part 5. Council on Educational Services for Exceptional Children.

115C-121. [Repealed.]

Part 6. Range of Services Available.

115C-122. [Repealed.]

Part 8. State School for Sight-impaired Children.

115C-129. [Reserved.]

Part 10. State and Local Relationships.

115C-139. [Repealed.]
115C-140. [Repealed.]
115C-140.1. [Repealed.]

Part 11. Rules and Regulations.

115C-141. [Repealed.]

Part 12. Nonreduction Provision.

115C-142. [Repealed.]

Part 13. Budget Analysis and Departmental Funding.

115C-143. [Repealed.]
115C-145. [Repealed.]
115C-146. [Reserved.]

Part 14. Handicapped Children, Ages Three to Five.

115C-146.1 through 115C-146.4. [Repealed.]
115C-147, 115C-148. [Reserved.]

Article 9A.

Children with Chemical Dependency.

115C-149. Policy. Chemically dependent children excluded from provisions of Article 9.

Article 16.

Optional Programs.

Part 3. Summer Schools.

115C-233. Operation of summer schools.

Part 6A. Charter Schools.

115C-238.29F. General requirements.
115C-238.29H. State and local funds for a charter school.

Article 17.

Supporting Services.

Part 1. Transportation.

Sec.
115C-242. Use and operation of school buses.
115C-243. Use of school buses by senior citizen groups.
115C-247. Purchase of activity buses by local boards.
115C-250. Authority to expend funds for transportation of children with disabilities.

SUBCHAPTER V. PERSONNEL.

Article 19.

Principals and Supervisors.

115C-284. Method of selection and requirements.

Article 19A.

Standards Board for Public School Administration.

115C-290.1 through 115C-290.9. [Repealed.]
115C-291 through 115C-294. [Reserved.]

Article 20.

Teachers.

115C-296.4. North Carolina Teacher Academy Board of Trustees.
115C-301.1. Duty-free instructional planning time.

Article 24C.

Teacher Enhancement Program.

Part 2. North Carolina Teaching Fellows Commission.

115C-363.23A. Teaching Fellows Program established; administration.

SUBCHAPTER VI. STUDENTS.

Article 25.

Admission and Assignment of Students.

115C-366. Assignment of student to a particular school.
115C-366.2. [Repealed.]
115C-367. Assignment on certain bases prohibited.
115C-371. Assignment to special education programs.

Article 25A.

Special Medical Needs of Students.

115C-375.1. To provide some medical care to students.

Sec.
115C-375.2. Possession and self-administration of asthma medication by students with asthma or students subject to anaphylactic reactions, or both.
115C-375.5. Education for pregnant and parenting students.

Article 27.

Discipline.

115C-391. Corporal punishment, suspension, or expulsion of pupils.
115C-391.1. Permissible use of seclusion and restraint.

Article 27A.

Management and Placement of Disruptive Students.

115C-397.1. Management and placement of disruptive students.

SUBCHAPTER VII. FISCAL AFFAIRS.

Article 31.

The School Budget and Fiscal Control Act.

Part 1. General Provisions.

115C-423. Definitions.

Article 31A.

Civil Penalty and Forfeiture Fund.

115C-457.2. Remittance of moneys to the Fund.

Article 35A.

College Scholarships.

Sec.
115C-499.1. Definitions.
115C-499.3. Scholarship amounts; amounts dependent on net income available.
115C-499.4. Scholarship administration; reporting requirements.

SUBCHAPTER IX. PROPERTY.

Article 37.

School Sites and Property.

115C-531. (Repealed effective July 1, 2011) Capital leases of school buildings and school facilities.
115C-532. (Repealed effective July 1, 2011) Additional provisions applicable to build-to-suit capital leases.

Article 38A.

Public School Building Capital Fund.

115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements.

SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

Article 39.

Nonpublic Schools.

Part 4. Miscellaneous Requirements.

115C-566. Driving eligibility certificates; requirements.

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

Definitions and Preliminary Provisions.

§ 115C-1. General and uniform system of schools.

Disadvantaged Student Supplemental Funding. — Session Laws 2005-276, s. 7.8(a)-(c) as amended by Session Laws 2006-66, s. 7.10, provides: "(a) Funds are appropriated in this act to address the capacity needs of local school administrative units to meet the needs of disadvantaged students. Each local school administrative unit shall use funds allocated to it for disadvantaged student supplemental funding to implement a plan jointly developed by the unit and the LEA Assistance Program team. The plan shall be based upon the needs of students in the unit not achieving grade-level proficiency. The plan shall detail how these funds shall be used in conjunction with all other supplemental funding allotments such as Low-Wealth, Small County, At-Risk Student Services/Alternative Schools, and Improving Student Accountability, to provide instructional and other services that meet the educational needs of these students. Prior to the allotment of disadvantaged student supplemental funds, the plan shall be approved by the State Board of Education.

"Funds received for disadvantaged student supplemental funding shall be used, consistent with the policies and procedures adopted by the State Board of Education, only to:

"(1) Provide instructional positions or instructional support positions and/or professional development;

"(2) Provide intensive in-school and/or after-school remediation;

"(3) Purchase diagnostic software and progress-monitoring tools; and

"(4) Provide funds for teacher bonuses and supplements. The State Board of Education shall set a maximum percentage of the funds that may be used for this purpose.

"The State Board of Education may require districts receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement. This data shall be used exclusively for instructional and curriculum decisions made in the best interest of children and for professional development for their teachers and administrators."

"(b) Funds are appropriated in this act to evaluate the Disadvantaged Student Supplemental Funding Initiatives and Low-Wealth Initiatives. The State Board of Education shall use these funds to:

"(1) Evaluate the strategies implemented by local school administrative units with Disadvantaged Student Supplemental Funds and Low-Wealth Funds and assess their impact on student performance; and

"(2) Evaluate the efficiency and effectiveness of the technical assistance and support provided to local school administrative units by the Department of Public Instruction.

"The State Board of Education shall report the results of the evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by February 15, 2006, and by January 15 of each subsequent year.

"(c) Beginning in the 2006-2007 fiscal year, funds appropriated to a local education agency (LEA) for disadvantaged student supplemental funding (DSSF) shall be allotted based on: (i) the LEA's eligible DSSF population and (ii) the difference between a teacher-to-student ratio of 1:21 and the following teacher-to-student ratios:

"(1) For counties with wealth greater than ninety percent (90%) of the statewide average, a ratio of 1:20.5;

"(2) For counties with wealth not less than eighty percent (80%) and not greater than ninety percent (90%) of the statewide average, a ratio of 1:20;

"(3) For counties with wealth less than eighty percent (80%) of the statewide average, a ratio of 1:19.5; and

"(4) For LEAs receiving DSSF funds in 2005-2006, a ratio of 1:16. These LEAs shall receive no less than the DSSF amount allotted in 2005-2006.

"For the purpose of this subsection, wealth shall be calculated under the low-wealth supplemental formula."

Funds to Implement the ABCs of Public Education. — Session Laws 2006-66, s. 7.6(a)-(c), provides: "(a) The State Board of Education shall use funds appropriated in this act for State Aid to Local School Administrative Units to provide incentive funding for schools that met or exceeded the projected levels of improvement in student performance during the 2005-2006 school year, in accordance with the ABCs of Public Education Program. In accordance with State Board of Education policy:

"(1) Incentive awards in schools that achieve higher than expected improvements may be up to:

"a. One thousand five hundred dollars ($1,500) for each teacher and for certified personnel; and

"b. Five hundred dollars ($500.00) for each teacher assistant.

"(2) Incentive awards in schools that meet the expected improvements may be up to:

"a. Seven hundred fifty dollars ($750.00) for each teacher and for certified personnel; and

"b. Three hundred seventy-five dollars ($375.00) for each teacher assistant.

"(b) Notwithstanding G.S. 143-23, the State Board of Education may use funds appropriated to the Department of Public Instruction and to the State Public School Fund to establish a consolidated, comprehensive program through which to provide assistance to low-performing schools. For this purpose only, the Board may, with approval from the Office of State Budget and Management, transfer funds between personal service and nonpersonal service line items currently supporting positions, related operating costs, and contracts for school improvement teams and for assistance teams. Funds transferred pursuant to this section shall not be used to raise the salary of existing employees.

"The Board shall report to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations by January 15, 2007, on any restructuring of the assistance program pursuant to this section.

"(c) The State Board of Education shall review the incentive award structure described in this section to ensure that extraordinary performance is rewarded. In addition, the Board shall determine whether the relationship between awards for teachers and teacher assistants and the Board's strategic priorities is appropriate. The Board shall provide a preliminary report of its findings and recommendations to the Joint Legislative Education Oversight Committee by December 15, 2006."

Session Laws 2006-66, s. 7.16(a)-(e) provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction."

"(b) The Director of NCVPS will ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the NC Virtual Public School Program, eliminating course duplication. The Director shall report on the proposed consolidation and operating plan for 2007-2008 to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division no later than January 15, 2007. Consolidation will be completed by June 30, 2007. Notwithstanding G.S 143-23, the State Board of Education may move funds within the budget to implement the consolidation.

"(c) Subsequent to course consolidation, the Director will prioritize e-learning course offerings for students residing in rural and low-wealth county LEAs, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) The State Board of Education shall develop an allotment formula for funding e-learning, effective in the 2007-2008 fiscal year. In developing the formula, the Board shall consider, at a minimum, the following:

"(1) The number of students in average daily membership (ADM) projected to enroll in e-learning,

"(2) The projected cost of fees for e-learning courses,

"(3) The extent to which projected enrollment in e-learning courses affects funding required for other allotments that are based on ADM."

"(e) Any funds appropriated in this act for the NCVPS program that are not expended in fiscal year 2006-2007 shall be carried forward for expenditure in fiscal year 2007-2008. Any such funds that remain unexpended on June 30, 2008, shall revert to the General Fund."

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

CASE NOTES

Cited in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

Article 2.

State Board of Education.

§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

(1) Financial Powers. — The financial powers of the Board are set forth in Article 30 of this Chapter.

(1a) **(Effective until July 1, 2007)** To Submit a Budget Request to the Director of the Budget. — The Board shall submit a budget request to the Director of the Budget in accordance with G.S. 143-6. In addition to the information requested by the Director of the Budget, the Board shall provide an analysis relating each of its requests for expansion funds to anticipated improvements in student performance.

(1a) **(Effective July 1, 2007)** To Submit a Budget Request tothe Director of the Budget. — The Board shall submit a budget request to the Director of the Budget in accordance with G.S. 143C-3-3. In addition to the information requested by the Director of the Budget, the Board shall provide an analysis relating each of its requests for expansion funds to anticipated improvements in student performance.

(2) Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 24.

(3), (4) Repealed by Session Laws 1987 (Regular Session, 1988), c. 1025, s. 1.

(5) Apportionment of Funds. — The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.

(6) Power to Demand Refund for Inaccurate Apportionment Due to False Attendance Records. — When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teacher salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified.

(7) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County. — The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(8) Power to Make Provisions for Sick Leave and for Substitute Teachers. — The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

The minimum pay for a substitute teacher who holds a teaching certificate shall be sixty-five percent (65%) of the daily pay rate of an entry-level teacher with an “A” certificate. The minimum pay for a substitute teacher who does not hold a teaching certificate shall be fifty percent (50%) of the daily pay rate of an entry-level teacher with an “A” certificate. The pay for noncertified substitutes shall not exceed the pay of certified substitutes.

Local boards may use State funds allocated for substitute teachers to hire full-time substitute teachers.

If a teacher assistant acts as a substitute teacher, the salary of the teacher assistant for the day shall be the same as the daily salary of an entry-level teacher with an “A” certificate.

(9) Miscellaneous Powers and Duties. — All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

b. To adopt and supply textbooks.

c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education Program.

c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance.

c2. Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 1.

c3. To develop a system of school building improvement reports for each school building. The purpose of school building improvement reports is to measure improvement in the growth in student performance at each school building from year to year, not to compare school buildings. The Board shall include in the building reports any factors shown to affect student performance that the Board considers relevant to assess a school's efforts to improve student performance. Local school administrative units shall produce and make public their school building improvement reports by March 15, 1997, for the 1995-96 school year, by October 15, 1997, for the 1996-97 school year, and annually thereafter. Each report shall be based on building-level data for the prior school year.

c4. To develop guidelines, procedures, and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters.

(9a), (9b) Repealed by Session Laws 2005-458, s. 1, effective October 2, 2005.

(9c) Power to develop content standards and exit standards. — The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes.

High school course content standards shall include the knowledge and skills necessary to pursue further postsecondary education or to attain employment in the 21st century economy. The high school course content standards also shall be aligned with the minimum undergraduate course requirements for admission to the constituent institutions of The University of North Carolina. The Board may develop exit standards that will be required for high school graduation.

The Board also shall develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis. Alignment shall include revising textbook criteria, support materials, State tests, teacher and school administrator preparation, and ongoing professional development programs to be compatible with content standards. The Board shall develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards. The State Board of Education shall work in collaboration with the Board of Governors of The University of North Carolina to ensure that teacher and school administrator degree programs, ongoing professional development, and other university activity in the State's public schools align with the State Board's priorities.

(10) Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas. — The Board is authorized and empowered, in its discretion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.

For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.

(11) Power to Conduct Education Research. — The Board is authorized to sponsor or conduct education research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the

Board may determine. The Board may use any available funds for such purposes.

(12) Duty to Provide for Sports Medicine and Emergency Paramedical Program. — The State Board of Education is authorized and directed to develop a comprehensive plan to train and make available to the public schools personnel who shall have major responsibility for exercising preventive measures against sports related deaths and injuries and for providing sports medicine and emergency paramedical services for injuries that occur in school related activities. The plan shall include, but is not limited to, the training, assignment of responsibilities, and appropriate additional reimbursement for individuals participating in the program.

The State Board of Education is authorized and directed to develop an implementation schedule and a program funding formula that will enable each high school to have a qualified sports medicine and emergency paramedical program by July 1, 1984.

The State Board of Education is authorized and directed to establish minimum educational standards necessary to enable individuals serving as sports medicine and emergency paramedical staff to provide such services, including first aid and emergency life saving skills, to students participating in school activities.

(13) Power to Purchase Liability Insurance. — The Board is authorized to purchase insurance to protect board members from liability incurred in the exercise of their duty as members of the Board.

(14) Duty to Provide Personnel Information to Local Boards. — Upon request, the State Board of Education and the Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction.

(15) Duty to Develop Noncertified Personnel Position Evaluation Descriptions. — The Board is authorized and directed to develop position evaluation descriptions covering those positions in local school administrative units for which certification by the State Board of Education is not normally a prerequisite. The position evaluation descriptions required in this subdivision are to be used by local boards of education as the basis for assignment of noncertified employees to an appropriate pay grade in accordance with salary grades and ranges adopted by the State Board of Education. No appropriations are required by this subdivision.

(16) Power with Regard to Salary Schedules. — The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.

b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, teacher assistants, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.

By the end of the third payroll period of the 1995-96 fiscal year, local boards of education shall place State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board of Education so that the average salary paid is the State-allotted amount for the category. In placing employees on the salary schedule, the local board shall consider the education, training, and experience of each employee, including experience in other local school administrative units. It is the intent of the General Assembly that a local school administrative unit not fail to employ an employee who was employed for the prior school year in order to implement the provisions of this sub-subdivision. A local board of education is in compliance with this sub-subdivision if the average salary paid is at least ninety-five percent (95%) of the State-allotted amount for the category at the end of the third payroll period of the 1995-96 fiscal year, and at least ninety-eight percent (98%) of the State-allotted amount for the category at the end of the third payroll period of each subsequent fiscal year. The Department of Public Instruction shall provide technical assistance to local school administrative units regarding the implementation of this sub-subdivision.

c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations.

(17) Power to provide for school transportation programs. The State Board of Education is authorized and empowered to promulgate such policies, rules, and regulations as it may deem necessary and desirable for the operation of a public school transportation system by each local administrative unit in the State. Such policies, rules, and regulations shall include, but are not limited to, fund allocations and fiscal support to assure the effective and efficient use of funds appropriated by the General Assembly in support of the school transportation system. Nothing herein shall be construed to affect in any way or to lessen in any way the full and complete authority of local boards of education to assign pupils to schools in accordance with G.S. 115C-366.

(18) Duty to Develop and Implement a Uniform Education Reporting System, Which Shall Include Standards and Procedures for Collecting Fiscal and Personnel Information.

a. The State Board of Education shall adopt standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, on all school personnel. All local school administrative units shall comply with these standards and procedures by the beginning of the 1987-88 school year.

b. The State Board of Education shall develop and implement a Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network. All local school administrative units shall comply with the requirements of the Uniform Education Reporting System by the beginning of the 1989-90 school year.

c. The State Board of Education shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State. The State Board of Education shall require local boards of education to provide to the parents of children at a school all information except for confidential information received about that school from institutions of higher education pursuant to G.S. 116-11(10a) and to make that information available to the general public.

d. The State Board of Education shall modify the Uniform Education Reporting System to provide clear, accurate, and standard information on the use of funds at the unit and school level. The plan shall provide information that will enable the General Assembly to determine State, local, and federal expenditures for personnel at the unit and school level. The plan also shall allow the tracking of expenditures for textbooks, educational supplies and equipment, capital outlay, at-risk students, and other purposes. The revised Uniform Education Reporting System shall be implemented beginning with the 1999-2000 school year.

(19) Duty to Identify Required Reports and to Eliminate Unnecessary Reports and Paperwork. — Prior to the beginning of each school year, the State Board of Education shall identify all reports that are required at the State level for the school year.

The State Board of Education shall adopt policies to ensure that local school administrative units are not required by the State Board of Education, the State Superintendent, or the Department of Public Instruction staff to (i) provide information that is already available on the student information management system or housed within the Department of Public Instruction; (ii) provide the same written information more than once during a school year unless the information has changed during the ensuing period; or (iii) complete forms, for children with disabilities, that are not necessary to ensure compliance with the federal Individuals with Disabilities Education Act (IDEA). Notwithstanding the foregoing, the State Board may require information available on its student information management system or require the same information twice if the State Board can demonstrate a compelling need and can demonstrate there is not a more expeditious manner of getting the information.

(20) Duty to Report Appointment of Caretaker Administrators and Boards. — Pursuant to G.S. 120-30.9G the State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(21) Duty to Monitor Acts of School Violence. — The State Board of Education shall monitor and compile an annual report on acts of violence in the public schools. The State Board shall adopt standard

definitions for acts of school violence and shall require local boards of education to report them to the State Board in a standard format adopted by the State Board.

(22) Duty to Monitor the Decisions of Teachers to Leave the Teaching Profession. — The State Board of Education shall monitor and compile an annual report on the decisions of teachers to leave the teaching profession. The State Board shall adopt standard procedures for each local board of education to use in requesting the information from teachers who are not continuing to work as teachers in the local school administrative unit and shall require each local board of education to report the information to the State Board in a standard format adopted by the State Board.

(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. — The State Board of Education may adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level.

(24) Duty to Develop Standards for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. — The State Board of Education shall adopt standards for assigning students to alternative learning programs. These standards shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision. The State Board also shall adopt policies that define what constitutes an alternative school and an alternative learning program.

The State Board of Education shall also adopt standards to require that local school administrative units shall use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans and proposals for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under G.S. 115C-105.35, measure the educational performance and growth of students placed in alternative schools and alternative programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools. Also as part of its evaluation, the State Board shall evaluate its standards adopted under this subdivision and make any necessary changes to those standards based on strategies that have been proven successful in improving student achievement and shall report to the Joint Legislative Education Oversight Committee by April 15, 2006 to determine if any changes are necessary to improve the implementation of successful alternative learning programs and alternative schools.

(25) Duty to Report to Joint Legislative Education Oversight Committee. — Upon the request of the Joint Legislative Education Oversight Committee, the State Board shall examine and evaluate issues, programs, policies, and fiscal information, and shall make reports to that Committee. Furthermore, beginning October 15, 1997, and annually thereafter, the State Board shall submit reports to that Committee regarding the continued implementation of Chapter 716 of the 1995 Session Laws, 1996 Regular Session. Each report shall include information regarding the composition and activity of assistance teams, schools that received incentive awards, schools identified as low-performing, school improvement plans found to significantly improve student performance, personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility.

(26) Duty to Monitor and Make Recommendations Regarding Professional Development Programs. — The State Board of Education, in collaboration with the Board of Governors of The University of North Carolina, shall identify and make recommendations regarding meaningful professional development programs for professional public school employees. The programs shall be aligned with State education goals and directed toward improving student academic achievement. The State Board shall annually evaluate and, after consultation with the Board of Governors, make recommendations regarding professional development programs based upon reports submitted by the Board of Governors under G.S. 116-11(12a).

(27) Reporting Dropout Rates, Suspensions, Expulsions, and Alternative Placements. — The State Board shall report annually to the Joint Legislative Education Oversight Committee and the Commission on Improving the Academic Achievement of Minority and At-Risk Students on the numbers of students who have dropped out of school, been suspended, been expelled, or been placed in an alternative program. The data shall be reported in a disaggregated manner and be readily available to the public. The State Board shall not include students that have been expelled from school when calculating the dropout rate. The Board shall maintain a separate record of the number of students who are expelled from school.

(27a) Reducing School Dropout Rates. — The State Board of Education shall develop a statewide plan to improve the State's tracking of dropout data so that accurate and useful comparisons can be made over time. The plan shall include, at a minimum, how dropouts are counted and the methodology for calculating the dropout rate, the ability to track students movements among schools and districts, and the ability to provide information on who drops out and why.

(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. — The State Board of Education shall adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish the procedures a person who is or was enrolled in a public school or in a charter school must follow and the requirements that person shall meet to obtain a driving eligibility certificate.

c. To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:
   1. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).
   2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

   These rules shall apply to public schools and charter schools.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.

e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools.

The State Board of Education may use funds appropriated for drivers education to cover the costs of driving eligibility certificates.

(29) To issue special high school diplomas to veterans of World War II Korea, and Vietnam. — The State Board of Education shall issue special high school diplomas to all honorably discharged veterans of World War II, the Korean Conflict, and the Vietnam era who request special diplomas and have not previously received high school diplomas.

(30) Duty to Adopt Model Guidelines and Policies for the Establishment of Local Task Forces on Closing the Academic Achievement Gap. — The State Board shall adopt a Model for local school administrative units to use as a guideline to establish local task forces on closing the academic achievement gap at the discretion of the local board. The purpose of each task force is to advise and work with its local board of education and administration on closing the gap in academic achievement and on developing a collaborative plan for achieving that goal. The State Board shall consider the recommendations of the Commission on Improving the Academic Achievement of Minority and At-Risk Students to the 2001 Session of the General Assembly in establishing its guidelines.

(30a) Duty to Assist Schools in Meeting Adequate Yearly Progress. — The State Board of Education shall:

a. Identify which schools are meeting adequate yearly progress with subgroups as specified in the No Child Left Behind Act of 2001;

b. Study the instructional, administrative, and fiscal practices and policies employed by the schools selected by the State Board of Education that are meeting adequate yearly progress specified in the No Child Left Behind Act of 2001;

c. Create assistance models for each subgroup based on the practices and policies used in schools that are meeting adequate yearly progress. The schools of education at the constituent institutions of The University of North Carolina, in collaboration with the University of North Carolina Center for School Leadership Development, shall assist the State Board of Education in developing these models; and

d. Offer technical assistance based on these assistance models to local school administrative units not meeting adequate yearly progress, giving priority to those local school administrative units with high concentrations of schools that are not meeting adequate yearly progress. The State Board of Education shall determine the number of local school administrative units that can be served effectively in the first two years. This technical assistance shall include peer assistance and professional development by teachers, support personnel, and administrators in schools with subgroups that are meeting adequate yearly progress.

(31) To Adopt Guidelines for Individual Diabetes Care Plans. — The State Board shall adopt guidelines for the development and implementation of individual diabetes care plans. The State Board shall consult with the North Carolina Diabetes Advisory Council established by the Department of Health and Human Services in the development of these guidelines. The State Board also shall consult with local school administrative unit employees who have been designated as responsible for coordinating their individual unit's efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. In its development of these guidelines, the State Board shall refer to the guidelines recommended by the American Diabetes Association for the management of children with diabetes in the school and day care setting and shall consider recent resolutions by the United States Department of Education's Office of Civil Rights of investigations into complaints alleging discrimination against students with diabetes.

The guidelines adopted by the State Board shall include:

a. Procedures for the development of an individual diabetes care plan at the written request of the student's parent or guardian, and involving the parent or guardian, the student's health care provider, the student's classroom teacher, the student if appropriate, the school nurse if available, and other appropriate school personnel.

b. Procedures for regular review of an individual care plan.

c. Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student is able to participate in the student's diabetes care and management, and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student. The State Board shall ensure that the information and allowable actions included in a diabetes care plan as required in this subdivision meet or exceed the American Diabetes Association's recommendations for the management of children with diabetes in the school and day care setting.

d. Information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.

The State Board shall ensure that these guidelines are updated as necessary and shall ensure that the guidelines and any subsequent changes are published and disseminated to local school administrative units.

(32) Duty to Encourage Early Entry of Motivated Students into Four-Year College Programs. — The State Board of Education, in cooperation with the Education Cabinet, shall work with local school administrative units, the constituent institutions of The University of North Carolina, local community colleges, and private colleges and universities to (i) encourage early entry of motivated students into four-year college programs and to (ii) ensure that there are opportunities at four-year institutions for academically talented high school students to get an early start on college coursework, either at nearby institutions or through distance learning.

The State Board of Education shall also adopt policies directing school guidance counselors to make ninth grade students aware of the potential to complete the high school courses required for college entry in a three-year period.

(33) Duty to Develop Recommended Programs for Use in Schools on Memorial Day. — The State Board of Education shall develop recommended instructional programs that enable students to gain a better understanding of the meaning and importance of Memorial Day. All schools, especially schools that hold school on Memorial Day, shall recognize the significance of Memorial Day.

(34) Duty to Protect the Health of School-Age Children From Toxicants at School. — The State Board shall address public health and environmental issues in the classroom and on school grounds by doing all of the following:

a. Develop guidelines for sealing existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds and testing the soil on school grounds for contamination caused by the leaching of arsenic-treated wood in other areas where children may be at particularly high risk of exposure.

b. Establish guidelines to reduce students' exposure to diesel emissions that can occur as a result of unnecessary school bus idling, nose-to-tail parking, and inefficient route assignments.

c. Study methods for mold and mildew prevention and mitigation and incorporate recommendations into the public school facilities guidelines as needed.

d. Establish guidelines for Integrated Pest Management consistent with the policy of The North Carolina School Boards Association, Inc., as published in 2004. These guidelines may be updated as needed to reflect changes in technology.

e. Establish guidelines for notification of students' parents, guardians, or custodians as well as school staff of pesticide use on school grounds. (1955, c. 1372, art. 2, s. 2; art. 17, s. 6; art. 18, s. 2; 1957, c. 541, s. 11; 1959, c. 1294; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 584, s. 20.1; c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 236; c. 476, s. 138; c. 675; 1975, c. 686, s. 1; c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; c. 986; 1981, c. 423, s. 1; 1983, c. 630, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 16; 1985, c. 479, s. 55(c)(3); c. 757, s.

145(a); 1985 (Reg. Sess., 1986), c. 975, s. 24; 1987, c. 414, s. 1; 1987 (Reg. Sess., 1988), c. 1025, ss. 1, 3; 1989, c. 585, s. 1; c. 752, s. 65(c); c. 778, s. 6; 1991, c. 529, s. 3; c. 689, s. 196(b); 1991 (Reg. Sess., 1992), c. 880, s. 3; c. 900, s. 75.1(e); 1993, c. 321, ss. 125, 133(a), 139(b); 1993 (Reg. Sess., 1994), c. 769, ss. 19(a), 19.9; 1995, c. 60, s. 1; c. 324, s. 17.15(a); c. 450, s. 4; c. 509, s. 59; 1995 (Reg. Sess., 1996), c. 716, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 18.4, 18.28(a); 1997-18, s. 15(a), (c)-(e); 1997-221, s. 12(a); 1997-239, s. 1; 1997-443, s. 8.27(a), (e); 1997-443, s. 8.29(o), (u); 1997-507, s. 3; 1998-153, s. 16(b); 1998-212, ss. 9.16(a), 9.23; 1999-237, s. 8.25(d); 1999-243, s. 5; 1999-397, s. 3; 2001-86, s. 1; 2001-151, s. 1; 2001-424, ss. 28.30(e), (f), 31.4(a); 2002-103, s. 1; 2002-126, s. 7.15; 2002-159, s. 63; 2002-178, s. 1(a); 2003-251, s. 1; 2003-419, s. 1; 2005-155, s. 1; 2005-276, ss. 7.18, 9.34(a); 2005-446, s. 1; 2005-458, ss. 1, 2; 2006-75, s. 1; 2006-143, s. 1; 2006-203, s. 30; 2006-260, s. 1.)

Subdivision (1a) Set Out Twice. — The first version of subdivision (1a) set out above is effective until July 1, 2007. The second version of subdivision (1a) set out above is effective July 1, 2007.

Local Modification. — Dare: 2006-23, s. 1; Hyde: 2006-23, s. 1; Martin: 2006-23, s. 1; Tyrrell: 2006-23, s. 1; Washington: 2006-23, s. 1.

NC Virtual Public School Program. — Session Laws 2006-66, s. 7.16(a)-(e) provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS will ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the NC Virtual Public School Program, eliminating course duplication.

"The Director shall report on the proposed consolidation and operating plan for 2007-2008 to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division no later than January 15, 2007. Consolidation will be completed by June 30, 2007. Notwithstanding G.S 143-23, the State Board of Education may move funds within the budget to implement the consolidation.

"(c) Subsequent to course consolidation, the Director will prioritize e-learning course offerings for students residing in rural and low-wealth county LEAs, in order to expand available instructional opportunities. First-available elearning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) The State Board of Education shall develop an allotment formula for funding e-learning, effective in the 2007-2008 fiscal year. In developing the formula, the Board shall consider, at a minimum, the following: (1) The number of students in average daily membership (ADM) projected to enroll in elearning, (2) The projected cost of fees for e-learning courses, (3) The extent to which projected enrollment in e-learning courses affects funding required for other allotments that are based on ADM.

"(e) Any funds appropriated in this act for the NCVPS program that are not expended in fiscal year 2006-2007 shall be carried forward for expenditure in fiscal year 2007-2008. Any such funds that remain unexpended on June 30, 2008, shall revert to the General Fund."

Study and Report on School Counselor's Role in Providing Dropout Prevention and Intervention Services. — Session Laws 2006-176, ss. 1, 2, provide: "1. Research shows that school counselors can provide effective services to students that encourage them to stay in school, succeed in school, and graduate from high school. Research also shows that middle school is a critical time for students who are at risk of dropping out of school. The General Assembly currently provides funding that local school administrative units may use to hire school counselors; it is unclear, however, what role school counselors play in providing effective and efficient dropout prevention and intervention services to students in middle and high school. The General Assembly needs additional information to determine whether adjustments should be made in funding for school counselors or assignment of duties to school counselors; therefore, the State Board of Education shall report the following information to the Joint Legislative Education Oversight Committee prior to March 15, 2007.

"(1) The counselor-to-student ratio in schools with a sixth grade or higher grade;

"(2) The source of funds used for each of these counselors;

"(3) A review and analysis of the counselors' primary duties by school;

"(4) A summary and description of school-based dropout prevention and intervention services provided directly to students in the sixth grade and higher grades, including the role of school counselors in providing the services; and

"(5) The number of school counselors and other individuals per local school administrative unit whose primary responsibility is to provide school-based dropout prevention and intervention services and the percentage of their time spent providing these services.

"2. The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to November 1, 2007, on the implementation of State Board Policy QP-C-012, Policy Delineating the Job Description and Performance Criteria for School Counselors."

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-143, s. 1, added a new subdivision (33). It has been redesignated as subdivision (34) at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable for this act remain applicable to those prosecutions."

Session Laws 2006-143, s. 3 provides: "Nothing in this act shall be construed to create a private cause of action against the State Board of Education, a local board of education, or their agents or employees."

Effect of Amendments. —

Session Laws 2006-75, s. 1, effective July 10, 2006, added subdivision (33).

Session Laws 2006-143, s. 1, effective October 1, 2006, added subdivision (34).

Session Laws 2006-203, s. 30, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-3-3" for "G.S. 143C-6" in subsection (1a).

Session Laws 2006-260, s. 1, effective August 24, 2006, in subdivision (29), substituted "World War II, Korea, and Vietnam" for "World War II" in the subdivision catchline, and substituted "veterans of World War II, the Korean Conflict, and the Vietnam era" for "veterans of World War II" near the middle.

CASE NOTES

Cited in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

§ 115C-21. Powers and duties generally.

Transfer of More at Four Program and Office of School Readiness to Department of Public Instruction. — Session Laws 2006-66, s. 7.18(a), provides: "(a) The More at Four program and the Office of School Readiness are transferred from the Office of the Governor to the Department of Public Instruction effective July 1, 2006. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6. The Office of School Readiness will provide oversight to the More at Four program and other related early childhood and prekindergarten education experiences. An Executive Director for the Office of School Readiness will be appointed by the State Board of Education."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

ARTICLE 5.

Local Boards of Education.

§ 115C-37. Election of board members.

CASE NOTES

Cited in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

§ 115C-40. Board a body corporate.

CASE NOTES

Cited in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

§ 115C-42. Liability insurance and immunity.

CASE NOTES

Cited in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006); Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

§ 115C-44. Suits and actions.

CASE NOTES

Applied in Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

§ 115C-45. Judicial functions of board.

CASE NOTES

Appeal to Superior Court Not Permitted. — Trial court lacks subject matter jurisdiction to review a two-day suspension imposed on a student because neither G.S. 115C-391 nor G.S. 115C-45 allows an appeal of such to a superior court. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

§ 115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(1) To Provide an Adequate School System. — It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.

(2) To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions. — Local boards of education shall have the power

and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.

(3) To Divide Local School Administrative Units into Attendance Areas. — Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.

(4) To Regulate Extracurricular Activities. — Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

(5) To Fix Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed under G.S. 115C-84.2.

(6) To Regulate Fees, Charges and Solicitations. — Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbooks fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.

(7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.

(8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.

(9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.

(10) To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to assure that the class size and teaching load requirements set forth in G.S. 115C-301 are met. Any teacher who believes that the requirements of G.S. 115C-301 have not been met shall make a report to the principal and superintendent, and the superintendent shall immediately determine whether the requirements have in fact not been met. If the superintendent determines the requirements have not been met, he shall make a report to the next local board of education meeting. The local board of education shall take action to meet the requirements of the statute. If the local board cannot organizationally correct the exception and if any of the conditions set out in G.S. 115C-301(g)(1) exist, it shall immediately apply to the State Board of Education for additional personnel or a waiver of the class size requirements, as provided in G.S. 115C-301(g).

Upon notification from the State Board of Education that the reported exception does not qualify for an allotment adjustment or a waiver under provisions of G.S. 115C-301, the local board, within 30 days, shall take action necessary to correct the exception.

At the end of the second month of each school year, the local board of education, through the superintendent, shall file a report with the State Board of Education, in a format prescribed by the State Board of Education, describing the organization of each school, the duties of each teacher, the size of each class, and the teaching load of each teacher. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that exist at that time.

In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

(11) To Determine the School Calendar. — Local boards of education shall determine the school calendar under G.S. 115C-84.2.

(12) **(For final effective date, see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the standard course of study.

(12) **(For future effective date, see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the Basic Education Program.

(13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.

(14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.

(15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).

(16) To Remove a Superintendent, When Necessary. — Local boards of education shall remove a superintendent for cause, pursuant to the provisions of G.S. 115C-274(a).

(17) To Employ Assistant Superintendent and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).

(18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.

Prior to the beginning of each school year, each local board of education shall identify all reports, including local school required reports, that are required at the local level for the school year and shall, to the maximum extent possible, eliminate any duplicate or obsolete reporting requirements. No additional reports shall be required at the local level after the beginning of the school year without the prior approval of the local board of education.

Each local board of education shall appoint a person or establish a paperwork control committee to monitor all reports and other paperwork required of teachers by the central office.

(18a) To Adopt Rules and Policies Limiting the Noninstructional Duties of Teachers. — Local boards of education shall adopt rules and policies limiting the noninstructional duties assigned to teachers. A local board may temporarily suspend the rules and policies for individual schools upon a finding that there is a compelling reason the rules or policies should not be implemented. These rules and policies shall ensure that:

a. Teachers with initial certification are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to develop into skilled professionals;

b. Teachers with 27 or more years of experience are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to informally share their experience and expertise with their colleagues;

c. The noninstructional duties of all teachers are limited to the extent possible given federal, State, and local laws, rules, and policies, and that the noninstructional duties required of teachers are distributed equitably among employees.

(19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.

(20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.

(21) It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302.1(i), and 115C-316(b).

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of each school.

(22) To Provide School Food Services. — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.

(23) To Purchase Equipment and Supplies. — Local boards shall contract for equipment and supplies under G.S. 115C-522(a) and G.S. 115C-528.

(24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. Replacement units for activity buses shall be financed with local funds.

(25) To Secure Liability Insurance. — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.

(25a) To Reimburse the Additional Cost of Automobile Liability Coverage for School Social Workers Required to Transport Students. — Unless a local board of education otherwise provides for liability insurance coverage of a school social worker who is required to transport students under G.S. 115C-317.1, a local board of education may require a school social worker who is required to transport students as provided under G.S. 115C-317.1 to increase the liability limits or add a business-use rider, or both, on that employee's personal automobile liability insurance policy for the purpose of transporting students within the course of that employee's work duties, only if the board reimburses the employee for the additional premium charged, up to the maximum additional amount charged to a person with up to two points assessed under the Safe Driver Incentive Plan pursuant to G.S. 58-36-65, for the increased liability limits or the added rider, or both.

(26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

(27) Repealed by Session Laws 1987, c. 571, s. 2.

(28) To Enter Lease Purchase and Installment Purchase Contracts. — Local boards may enter into lease purchase and installment purchase contracts as provided in G.S. 115C-528.

(28a) To Enter Guaranteed Energy Savings Contracts for Energy Conservation Measures. — Local boards may purchase energy conservation measures by guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(29) To Authorize the Observance of a Moment of Silence. — To afford students and teachers a moment of quiet reflection at the beginning of each day in the public schools, to create a boundary between school time and nonschool time, and to set a tone of decorum in the classroom that will be conducive to discipline and learning, each local board of education may adopt a policy to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.

(29a) To Require the Display of the United States and North Carolina Flags, and to Require the Recitation of the Pledge of Allegiance. — Local boards of education shall adopt policies to (i) require the display of the United States and North Carolina flags in each classroom, when available, (ii) require that recitation of the Pledge of Allegiance be scheduled on a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

(29b) To Ensure Freedom of Religion. — No local board of education shall have a policy of denying, or that effectively prevents participation in, prayer in public schools by individuals on a voluntary basis, except when necessary to maintain order and discipline. No local board of education shall encourage or require any person to participate in prayer or influence the form or content of any prayer in public schools. This subdivision shall not be construed to direct any local board of education to take any action in violation of the Constitutions of North Carolina or the United States.

(30) To Appoint Advisory Councils. — Local boards of education are authorized to appoint advisory councils as provided in G.S. 115C-55.

(31) Local boards of education shall determine the hours of employment for teacher assistants. The Legislative Commission of Salary Schedules for Public School Employees shall include in its report to the General Assembly recommendations regarding hours of employment for teacher assistants and other employees.

(32) To Refer All Students Who Drop Out of the Public Schools to Appropriate Services. — Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services.

(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. — Each local board of education shall establish at least one alternative learning program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's standards developed under G.S. 115C-12(24). Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard.

Notwithstanding this subdivision, each local board shall adopt policies based on the State Board's standards developed under G.S. 115C-12(24). These policies shall apply to any new alternative learning program or alternative school that is implemented beginning with the 2006-2007 school year. Local boards of education are encouraged to apply these standards to alternative learning programs and alternative schools implemented before the 2006-2007 school year.

Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs comply with the State Board's standards developed under G.S. 115C-12(24) and whether they incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction.

(33) Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, pursuant to the provisions of G.S. 115C-98(b).

(33a) To Approve and Use Textbooks Not Adopted by State Board of Education. — Local boards of education shall have the authority to select, procure, and use textbooks not adopted by the State Board of Education as provided in G.S. 115C-98(b1).

(34) To Encourage the Business Community to Facilitate Student Achievement. — Local boards of education, in consultation with local business leaders, shall develop voluntary guidelines relating to after-school employment. The guidelines may include an agreement to limit the number of hours a student may work or to tie the number of hours a student may work to his academic performance, school attendance, and economic need. The General Assembly finds that local boards of education do not currently have information regarding how many of their students are employed after school and how many hours they work; the General Assembly urges local boards of education to compile this critical information so that the State can determine to what extent these students' work affects their school performance.

Local boards of education shall work with local business leaders to encourage employers to provide parents or guardians with time to attend conferences with their children's teachers.

The Superintendent of Public Instruction shall provide guidance and technical assistance to the local boards of education on carrying out the provisions of this subdivision.

(35) To produce school building improvement reports. — Each administrative unit shall produce school building improvement reports for

each school building in the local school administrative unit, in accordance with G.S. 115C-12(9)c3.

(36) To Report All Acts of School Violence. — Local boards of education shall report all acts of school violence to the State Board of Education in accordance with G.S. 115C-12(21).

(37) To purchase group accident and health insurance for students. — Local boards of education may purchase group accident, group health, or group accident and health insurance for students in accordance with G.S. 58-51-81.

(38) To Establish School Improvement Teams. — Local boards shall adopt a policy to ensure that each principal has established a school improvement team under G.S. 115C-105.27 and in accordance with G.S. 115C-288(l). Local boards shall direct the superintendent or the superintendent's designee to provide appropriate guidance to principals to ensure that these teams are established and that the principals work together with these teams to develop, review, and amend school improvement plans for their schools.

(39) To Adopt Policies Related to Student Retention Decisions. — Local boards shall adopt policies related to G.S. 115C-45(c) that include opportunities for parents and guardians to discuss decisions to retain students.

(40) To adopt emergency response plans. — Local boards of education may adopt emergency response plans relating to incidents of school violence. These plans are not a public record as the term "public record" is defined under G.S. 132-1 and shall not be subject to inspection and examination under G.S. 132-6.

(41) To Encourage Recycling in Public Schools. — Local boards of education shall encourage recycling in public schools and may develop and implement recycling programs at public schools.

(42) Recodified as G.S. 115C-375.3 by Session Laws 2005-22, s. 3(a), effective April 28, 2005.

(43) Local boards of education are encouraged to adopt policies that require superintendents to assign to the core academic courses, in seventh through ninth grades, teachers who have at least four years' teaching experience and who have received within the last three years an overall rating on a formal evaluation that is at least above standard.

(44) Recodified as G.S. 115C-375.4 by Session Laws 2005-22, s. 4(a), effective April 28, 2005.

(45) To Address the Use of Pesticides in Schools. — Local boards of education shall adopt policies that address the use of pesticides in schools. These policies shall:

a. Require the principal or the principal's designee to annually notify the students' parents, guardians, or custodians as well as school staff of the schedule of pesticide use on school property and their right to request notification. Such notification shall be made, to the extent possible, at least 72 hours in advance of nonscheduled pesticide use on school property. The notification requirements under this subdivision do not apply to the application of the following types of pesticide products: antimicrobial cleansers, disinfectants, self-contained baits and crack-and-crevice treatments, and any pesticide products classified by the United States Environmental Protection Agency as belonging to the U.S.E.P.A. Toxicity Class IV, "relatively nontoxic" (no signal word required on the product's label).

b. **(Effective October 1, 2011)** Require the use of Integrated Pest Management. As used in this sub-subdivision, "Integrated Pest

Management" or "IPM" means the comprehensive approach to pest management that combines biological, physical, chemical, and cultural tactics as well as effective, economic, environmentally sound, and socially acceptable methods to prevent and solve pest problems that emphasizes pest prevention and provides a decision-making process for determining if, when, and where pest suppression is needed and what control tactics and methods are appropriate.

(46) To Address Arsenic-Treated Wood in the Classroom and on School Grounds. — Local boards of education shall prohibit the purchase or acceptance of chromated copper arsenate-treated wood for future use on school grounds. Local boards of education shall seal existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds, according to the guidelines established under G.S. 115C-12(33). Local boards of education are encouraged to test the soil on school grounds for contamination caused by the leaching of arsenic-treated wood.

(47) To Address Mercury in the Classroom and on School Grounds. — Local boards of education are encouraged to remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. Local boards of education shall prohibit the future use of bulk elemental mercury, chemical mercury compounds, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers.

(48) To Address Exposure to Diesel Exhaust Fumes. — Local boards of education shall adopt policies and procedures to reduce students' exposure to diesel emissions. (1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 7; c. 1185; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 538; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2, 1; c. 1034, s. 16; 1985, c. 436, s. 1; c. 479, ss. 55(c)(4), 55(c)(6); c. 637; c. 757, s. 145(i); 1985 (Reg. Sess., 1986), c. 975, ss. 3, 11; c. 1014, s. 58; 1987, c. 340; c. 414, s. 2; c. 571, s. 2; c. 738, s. 182; 1987 (Reg. Sess., 1988), c. 1025, ss. 9, 15; c. 1086, s. 89(b); 1989, c. 585, s. 2; c. 752, s. 65(b); 1989 (Reg. Sess., 1990), c. 1074, s. 23(b); 1991, c. 706, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(f); 1993, c. 114, s. 1; c. 321, s. 139(c); 1993 (Reg. Sess., 1994), c. 716, s. 2; c. 775, s. 5; 1995, c. 455, s. 1; c. 497, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 716, ss. 11, 12, 17; 1997-443, s. 8.38(j)-(l); 1998-194, s. 3; 1998-202, s. 12; 1999-96, s. 7; 1999-237, s. 8.25(a); 1999-373, s. 3; 1999-397, s. 4; 1999-456, s. 35; 2000-67, s. 8.18(b); 2000-140, s. 77; 2001-424, s. 28.17(c); 2001-500, s. 3; 2001-512, s. 12; 2002-103, s. 2; 2002-178, s. 3; 2003-147, s. 4; 2004-118, s. 2; 2004-203, s. 72(b); 2005-22, ss. 3(a), 4(a); 2005-205, s. 5; 2005-276, s. 10.40D(f); 2005-355, s. 2; 2005-446, s. 3; 2006-137, s. 1; 2006-143, s. 2.)

Editor's Note. —

Session Laws 2006-143, s. 4, made the amendments to this section by Session Laws 2006-143, s. 2, effective October 1, 2006, except for sub-subdivision (45)b., which becomes effective October 1, 2011.

Session Laws 2006-143, s. 3, provides: "Nothing in this act shall be construed to create a private cause of action against the State Board of Education, a local board of education, or their agents or employees."

Effect of Amendments. —

Session Laws 2006-137, s. 1, effective July 19, 2006, in subdivision (29a), substituted "Require" for "Encourage" twice, and deleted "or Oath" in the subdivision heading, substituted "shall adopt" for "are encouraged to adopt" in the introductory language, substituted "require" for "provide for" and inserted "when available" in clause (i), and substituted "require that recitation of the Pledge of Allegiance be scheduled on a daily basis" for "provide the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis" in clause (ii).

Session Laws 2006-143, s. 2, added subdivisions (45) through (48). For effective date, see Editor's note.

§ 115C-50. Training of board members.

All members of local boards of education shall receive a minimum of 12 clock hours of training annually. The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education. The training may be provided by the North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the local board of education. (1991, c. 689, s. 200(d); 2006-264, s. 29(h).)

Effect of Amendments. — Session Laws 2006-264, s. 29, effective August 27, 2006, substituted "School of Government at the University of North Carolina at Chapel Hill" for "Institute of Government" in the last sentence.

SUBCHAPTER IV. EDUCATION PROGRAM.

ARTICLE 8.

General Education.

Part 1. Courses of Study.

§ 115C-81. Basic Education Program.

(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall adopt a Basic Education Program for the public schools of the State. Before it adopts or revises the Basic Education Program, the State Board shall consult with an Advisory Committee, including at least eight members of local boards of education, that the State Board appoints from a list of nominees submitted by the North Carolina School Boards Association.

The State Board shall implement the Basic Education Program within funds appropriated for that purpose by the General Assembly and by units of local government. It is the intent of the General Assembly that until the Basic Education Program is fully funded, the implementation of the Basic Education Program shall be the focus of State educational funding. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local school administrative unit by July 1, 1995.

It is further a goal of the General Assembly to provide supplemental funds to low-wealth counties to allow those counties to enhance the instructional program and student achievement.

(a1) The Basic Education Program shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education Program. Instruction shall be offered in the areas of arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and vocational and technical education.

Instruction in vocational and technical education under the Basic Education Program shall be based on factors including:

(1) The integration of academic and vocational and technical education;

(2) A sequential course of study leading to both academic and occupational competencies;

(3) Increased student work skill attainment and job placement;

(4) Increased linkages, where geographically feasible, between public schools and community colleges, so the public schools can emphasize academic preparation and the community colleges can emphasize specific job training; and

(5) Instruction and experience, to the extent practicable, in all aspects of the industry the students are prepared to enter.

(a2) Repealed by Session Laws 1995, c. 534, s. 1.

(a3) Alcohol and Drug Education Program to Be Recommended and Implemented:

(1) A comprehensive education program that includes alcohol and drug use prevention education must be available to every child in North Carolina schools in kindergarten through high school.

(2) The State Board of Education shall develop and maintain a recommended list of alcohol and drug use prevention education materials that include components for teacher training and ongoing assessment and evaluation to verify success and ensure the use of up-to-date information and strategies.

(3) The Department of Public Instruction will work to strengthen instructional offerings in the content and skill areas of the Basic Education Program in which alcohol and drug use prevention education is addressed. Curricular materials and resources will be developed that meet, extend, and supplement drug and alcohol education as outlined in the North Carolina Standard Course of Study and the Teacher Handbook for the competency-based curriculum.

(4) The Department of Public Instruction shall recommend to the State Board of Education any drug use prevention education support materials that should be removed or added to the recommended list of curricular resources developed and maintained by the State Board of Education.

(5) Local boards of education may select supplemental alcohol and drug use prevention education materials from the list maintained by the State Board of Education, or develop their own supplemental materials to be approved by the State Board of Education.

(6) Local boards of education shall implement alcohol and drug use prevention education as a primary part of their comprehensive health education program.

(7) Local boards of education will provide for ongoing evaluation of drug use prevention education resources, to include participation in ongoing evaluations with the Department of Public Instruction.

(8) Local boards of education must implement an approved drug and alcohol education prevention program for kindergarten through sixth grade by the 1990-91 school year, and for seventh grade through twelfth grade by the 1991-92 school year.

(9) Repealed by Session Laws 2005-155, s. 2, effective July 5, 2005.

(10) The Department of Public Instruction, in conjunction with local school districts, will provide for staff development to train educators and support personnel to implement a comprehensive alcohol and drug use prevention education program.

(11) Sequential, age-appropriate instruction will be provided that has the following features:

a. Reaches all students in all grades;
b. Presents a clear and consistent message that the use of alcohol and illicit drugs and the misuse of other drugs is unhealthy and harmful;
c. Reflects current research and theory;
d. Includes all abusable substances;
e. Utilizes information that is current and accurate;
f. Involves students in active "hands-on" learning experiences;
g. Integrates substance abuse education with other health and social issues and other subject and skill areas of the North Carolina Basic Education Program and Standard Course of Study;
h. Promotes understanding and respect for the law and values of society;
i. Encourages health, safe, and responsible attitudes and behaviors;
j. Includes strategies to involve parents, family members, and the community;
k. Includes information on intervention and treatment services;
l. Is continually open to revision, expansion and improvement.

(a4) Conflict Resolution and Mediation Models: The State Board of Education shall develop a list of recommended conflict resolution and mediation materials, models, and curricula that address responsible decision making, the causes and effects of school violence and harassment, cultural diversity, and nonviolent methods for resolving conflict, including peer mediation and shall make the list available to local school administrative units and school buildings by the beginning of the 1994-95 school year. In developing this list, the Board shall emphasize materials, models, and curricula that currently are being used in North Carolina and that the Board determines to be effective. The Board shall include at least one model that includes instruction and guidance for the voluntary implementation of peer mediation programs and one model that provides instruction and guidance for teachers concerning the integration of conflict resolution and mediation lessons into the existing classroom curriculum.

(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:
(1) A core curriculum for all students that takes into account the special needs of children;
(2) A set of competencies, by grade level, for each curriculum area;
(3) A list of textbooks for use in providing the curriculum;
(4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with disabilities and, in particular, include appropriate modifications;
(5) A program of remedial education;
(6) Required support programs;
(7) A definition of the instructional day;
(8) Class size recommendations and requirements;
(9) Prescribed staffing allotment ratios;
(10) Material and equipment allotment ratios;
(11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations; and
(12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I.

(b1) Both the standard course of study and the Basic Education Program shall include the requirement that the public schools provide to all students two yearlong courses of instruction on North Carolina history and geography. One yearlong course of instruction shall be provided in elementary school, and one yearlong course of instruction shall be provided in middle school. Each course of instruction shall include contributions to the history and geography of the State by the racial and ethnic groups that have contributed to the development and diversity of the State. Each course of instruction may include up to four weeks of instruction relating to the local area in which the students reside.

(c) **(For final effective date, see notes)** Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the standard course of study, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise system, and the dangers of harmful or illegal drugs, including alcohol.

Except when a board authorizes teaching in a foreign language in order to comply with federal law, local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed.

(c) **(For future effective date, see notes)** Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the Basic Education Program, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise system, and the dangers of harmful or illegal drugs, including alcohol.

Except when a board authorizes teaching in a foreign language in order to comply with federal law, local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed.

(d) The standard course of study as it exists on January 1, 1985, and as subsequently revised by the State Board, shall remain in effect until its components have been fully incorporated and implemented as a part of the Basic Education Program.

(e) Repealed by Session Laws 1995, c. 534, s. 2.

(e1) School Health Education Program to Be Developed and Administered.

(1) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program includes age-appropriate instruction in the following subject areas, regardless of whether this instruction is described as, or incorporated into a description of, "family life education", "family health education", "health education", "family living", "health", "healthful living curriculum", or "self-esteem":

a. Mental and emotional health;
b. Drug and alcohol abuse prevention;
c. Nutrition;
d. Dental health;
e. Environmental health;
f. Family living;
g. Consumer health;
h. Disease control;

i. Growth and development;
j. First aid and emergency care, including the teaching of cardiopulmonary resuscitation (CPR) and the Heimlich maneuver by using hands-on training with mannequins so that students become proficient in order to pass a test approved by the American Heart Association, or American Red Cross;
k. Preventing sexually transmitted diseases, including HIV/AIDS, and other communicable diseases;
l. Abstinence until marriage education; and
m. Bicycle safety.

"As used in this subsection, "HIV/AIDS" means Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome."

(2) The State Board of Education shall supervise the development and operation of a statewide comprehensive school health education program including curriculum development, in-service training provision and promotion of collegiate training, learning material review, and assessment and evaluation of local programs in the same manner as for other programs. The State Board of Education shall adopt objectives for the instruction of the subject areas listed in subdivision (1) of this subsection that are appropriate for each grade level. In addition, the State Board shall approve textbooks and other materials incorporating these objectives that local school administrative units may purchase with State funds. The State Board of Education, through the Department of Public Instruction, shall, on a regular basis, review materials related to these objectives, and distribute these reviews to local school administrative units for their information.

(3) The State Board of Education shall develop objectives for instruction in the prevention of sexually transmitted diseases,including HIV/AIDS, that include emphasis on the importance of parental involvement, abstinence from sex until marriage, and avoiding intravenous drug use. Any program developed under this subdivision shall present techniques and strategies to deal with peer pressure and to offer positive reinforcement and shall teach reasons, skills, and strategies for remaining or becoming abstinent from sexual activity; for appropriate grade levels and classes, shall teach that abstinence from sexual activity until marriage is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases when transmitted through sexual contact, and other associated health and emotional problems, and that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding diseases transmitted by sexual contact, including HIV/AIDS, shall teach how alcohol and drug use lower inhibitions, which may lead to risky sexual behavior,and shall teach the positive benefits of abstinence until marriage and the risks of premarital sexual activity.

(4) The State Board of Education shall evaluate abstinence until marriage curricula and their learning materials and shall develop and maintain a recommended list of one or more approved abstinence until marriage curricula. The State Board may develop an abstinence until marriage program to include on the recommended list. The State Board of Education shall not select or develop a program for inclusion on the recommended list that does not include the positive benefits of abstinence until marriage and the risks of premarital sexual activity as the primary focus. The State Board shall include on the recommended list only programs that include, in appropriate grades and classes, instruction that:

a. Teaches that abstinence from sexual activity outside of marriage is the expected standard for all school-age children;
b. Presents techniques and strategies to deal with peer pressure and offering positive reinforcement;
c. Presents reasons, skills, and strategies for remaining or becoming abstinent from sexual activity;
d. Teaches that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases when transmitted through sexual contact, including HIV/AIDS, and other associated health and emotional problems;
e. Teaches that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding sexually transmitted diseases, including HIV/AIDS;
f. Teaches the positive benefits of abstinence until marriage and the risks of premarital sexual activity;
g. Provides opportunities that allow for interaction between the parent or legal guardian and the student; and
h. Provides factually accurate biological or pathological information that is related to the human reproductive system.

(5) The State Board of Education shall make available to all local school administrative units for review by the parents and legal guardians of students enrolled at that unit any State-developed objectives for instruction, any approved textbooks, the list of reviewed materials, and any other State-developed or approved materials that pertain to or are intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including HIV/AIDS,to the avoidance of out-of-wedlock pregnancy, or to the abstinence until marriage curriculum. The review period shall extend for at least 60 days before use.

(6) Each local school administrative unit shall provide a comprehensive school health education program that meets all the requirements of this subsection and all the objectives established by the State Board. Each local board of education may expand on the subject areas to be included in the program and on the instructional objectives to be met. This expanded program may include a comprehensive sex education program for that local school administrative unit only if all of the following requirements are satisfied:
a. Before a comprehensive sex education program is adopted, the local board of education shall conduct a public hearing, after adequately notifying the public of the hearing.
b. For at least 30 days before this public hearing and during this public hearing, the objectives for this proposed program and all instructional materials shall be made available for review.
c. For at least 30 days after the public hearing, the objectives for the program and all instructional materials shall remain available for review by parents and legal guardians of students in that local school administrative unit.

(7) Each school year, before students may participate in any portion of (i) a program that pertains to or is intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including HIV/AIDS, or to the avoidance of out-of-wedlock pregnancy, (ii) an abstinence until marriage program, or (iii) a comprehensive sex education program, whether developed by the State or by the local board of education, the parents and legal guardians of those students shall be given an opportunity to review the objectives and materials. Local boards of education shall

adopt policies to provide opportunities either for parents and legal guardians to consent or for parents and legal guardians to withhold their consent to the students' participation in any or all of these programs.

(8) Students may receive information about where to obtain contraceptives and abortion referral services only in accordance with a local board's policy regarding parental consent. Any instruction concerning the use of contraceptives or prophylactics shall provide accurate statistical information on their effectiveness and failure rates for preventing pregnancy and sexually transmitted diseases, including HIV/AIDS, in actual use among adolescent populations and shall explain clearly the difference between risk reduction and risk elimination through abstinence. The Department of Health and Human Services shall provide the most current available information at the beginning of each school year.

(9) Contraceptives, including condoms and other devices, shall not be made available or distributed on school property.

(10) School health coordinators may be employed to assist in the instruction of any portion of the comprehensive school health education program. Where feasible, a school health coordinator should serve more than one local school administrative unit. Each person initially employed as a State-funded school health coordinator after June 30, 1987, shall have a degree in health education.

(f) Establishment and Maintenance of Kindergartens. —

(1) Local boards of education shall provide for their respective local school administrative unit kindergartens as a part of the public school system for all children living in the local school administrative unit who are eligible for admission pursuant to subdivision (2) of this subsection provided that funds are available from State, local, federal or other sources to operate a kindergarten program as provided in this subsection.

All kindergarten programs so established shall be subject to the supervision of the Department of Public Instruction and shall be operated in accordance with the standards adopted by the State Board of Education, upon recommendation of the Superintendent of Public Instruction.

Among the standards to be adopted by the State Board of Education shall be a provision that the Board will allocate funds for the purpose of operating and administering kindergartens to each school administrative unit in the State based on the average daily membership for the best continuous three out of the first four school months of pupils in the kindergarten program during the last school year in that respective school administrative unit. Such allocations are to be made from funds appropriated to the State Board of Education for the kindergarten program.

(2) Any child who meets the requirements of G.S. 115C-364 shall be eligible for enrollment in kindergarten. Any child who is enrolled in kindergarten and not withdrawn by the child's parent or guardian shall attend kindergarten.

(3) Notwithstanding any other provision of law to the contrary, subject to the approval of the State Board of Education, any local board of education may elect not to establish and maintain a kindergarten program. Any funds allocated to a local board of education which does not operate a kindergarten program may be reallocated by the State Board of Education, within the discretion of the Board, to a county or city board of education which will operate such a program.

(g) Civic Literacy. —

(1) Local boards of education shall require during the high school years the teaching of the nation's founding and related documents, which shall include at least the major principles in the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.

(2) Local boards of education shall require that high school students demonstrate knowledge and understanding of the nation's founding and related documents in order to receive a certificate or diploma of graduation from high school.

(3) Local boards of education shall include among the requirements for graduation from high school a passing grade in all courses that include primary instruction in the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.

(3a) Local boards of education shall allow and may encourage any public school teacher or administrator to read or post in a public school building, classroom, or event, excerpts or portions of writings, documents, and records that reflect the history of the United States, including, but not limited to, (i) the preamble to the North Carolina Constitution, (ii) the Declaration of Independence, (iii) the United States Constitution, (iv) the Mayflower Compact, (v) the national motto, (vi) the National Anthem, (vii) the Pledge of Allegiance, (viii) the writings, speeches, documents, and proclamations of the founding fathers and Presidents of the United States, (ix) decisions of the Supreme Court of the United States, and (x) acts of the Congress of the United States, including the published text of the Congressional Record. Local boards, superintendents, principals, and supervisors shall not allow content-based censorship of American history in the public schools of this State, including religious references in these writings, documents, and records. Local boards and professional school personnel may develop curricula and use materials that are limited to specified topics provided the curricula and materials are aligned with the standard course of study or are grade level appropriate.

(3b) A local school administrative unit may display on real property controlled by that local school administrative unit documents and objects of historical significance that have formed and influenced the United States legal or governmental system and that exemplify the development of the rule of law, such as the Magna Carta, the Mecklenburg Declaration, the Ten Commandments, the Justinian Code, and documents set out in subdivision (3a) of this subsection. This display may include, but shall not be limited to, documents that contain words associated with a religion; provided however, no display shall seek to establish or promote religion or to persuade any person to embrace a particular religion, denomination of a religion, or other philosophy. The display of a document containing words associated with a religion shall be in the same manner and appearance generally as other documents and objects displayed and shall not be presented or displayed in any fashion that results in calling attention to it apart from the other displayed documents and objects. The display also shall be accompanied by a prominent sign quoting the First Amendment of the United States Constitution as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

(4) The State Board of Education shall require that any high school level curriculum-based tests developed and administered statewide beginning with academic year 1990-91 include questions related to the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.

(5) The State Department of Public Instruction and the local boards of education, as appropriate, shall establish curriculum content and provide for teacher training to ensure that the intent and provisions of this subsection are carried out. The curriculum content established shall include a review of the contributions made by Americans of all races.

(g1) Modifications to the social studies curriculum to instruct students on participation in the democratic process and to give them hands-on experience in participating in the democratic process:

(1) The State Board of Education shall modify the high school social studies curriculum to include instruction in civic and citizenship education. The State Board of Education is strongly encouraged to include, at a minimum, the following components in the high school civic and citizenship education curriculum:

a. That students write to a local, State, or federal elected official about an issue that is important to them;

b. Instruction on the importance of voting and otherwise participating in the democratic process;

c. Information about current events and governmental structure; and

d. Information about the democratic process and how laws are made.

(2) The State Board of Education shall modify the middle school social studies curriculum to include instruction in civic and citizenship education. The State Board of Education is strongly encouraged to include, at a minimum, the following components in the middle school civic and citizenship education curriculum:

a. A tour of representative local government facilities such as the local jail, the courthouse, or a town hall, to help students understand the way their community is governed;

b. That students choose and analyze a community problem and offer public policy recommendations on the problem to local officials; and

c. Information about getting involved in community groups.

(g2) Student Councils. — All high schools and middle schools shall be encouraged to have elected student councils through which students have input into policies and decisions that affect them. All other schools are encouraged to have student councils.

The purpose of these student councils is to build civic skills and attitudes such as participation in elections, discussion and debate of issues, and collaborative decision making. Schools shall encourage active, broad-based participation in these student councils.

(g3) Current Events. — Schools should encourage discussions of current events in a wide range of classes, especially social studies and language arts classes. All high schools and middle schools are encouraged to have at least two classes per grade level to offer interactive current events discussions at least every four weeks.

(h) Character Education. — Each local board of education shall develop and implement character education instruction with input from the local community. The instruction shall be incorporated into the standard curriculum and should address the following traits:

(1) Courage. — Having the determination to do the right thing even when others don't and the strength to follow your conscience rather than the crowd; and attempting difficult things that are worthwhile.

(2) Good judgment. — Choosing worthy goals and setting proper priorities; thinking through the consequences of your actions; and basing decisions on practical wisdom and good sense.

(3) Integrity. — Having the inner strength to be truthful, trustworthy, and honest in all things; acting justly and honorably.

(4) Kindness. — Being considerate, courteous, helpful, and understanding of others; showing care, compassion, friendship, and generosity; and treating others as you would like to be treated.

(5) Perseverance. — Being persistent in the pursuit of worthy objectives in spite of difficulty, opposition, or discouragement; and exhibiting patience and having the fortitude to try again when confronted with delays, mistakes, or failures.

(6) Respect. — Showing high regard for authority, for other people, for self, for property, and for country; and understanding that all people have value as human beings.

(7) Responsibility. — Being dependable in carrying out obligations and duties; showing reliability and consistency in words and conduct; being accountable for your own actions; and being committed to active involvement in your community.

(8) Self-Discipline. — Demonstrating hard work and commitment to purpose; regulating yourself for improvement and restraining from inappropriate behaviors; being in proper control of your words, actions, impulses, and desires; choosing abstinence from premarital sex, drugs, alcohol, and other harmful substances and behaviors; and doing your best in all situations.

(h1) In addition to the instruction under subsection (h) of this section, local boards of education are encouraged to include instruction on the following responsibilities:

(1) Respect for school personnel. — In the school environment, respect includes holding teachers, school administrators, and all school personnel in high esteem and demonstrating in words and deeds that all school personnel deserve to be treated with courtesy and proper deference.

(2) Responsibility for school safety. Helping to create a harmonious school atmosphere that is free from threats, weapons, and violent or disruptive behavior; cultivate an orderly learning environment in which students and school personnel feel safe and secure; and encourage the resolution of conflicts and disagreements through peaceful means including peer mediation. Instruction in this responsibility should include a consistent and age- appropriate antiviolence message and a conflict resolution component for students in kindergarten through twelfth grade. These messages should include media-awareness education to help children recognize stereotypes and messages portraying violence.

(3) Service to others. — Engaging in meaningful service to their schools and their communities. Schools may teach service-learning by (i) incorporating it into their standard curriculum, or (ii) involving a classroom of students or some other group of students in one or more hands-on community-service projects. All schools are encouraged to provide opportunities for student involvement in community service or service-learning projects.

(4) Good citizenship. — Obeying the laws of the nation and this State; abiding by school rules; and understanding the rights and responsibilities of a member of a republic.

(i) Both the standard course of study and the Basic Education Program shall include the requirement that the public schools provide instruction in personal financial literacy for all students during the high school years. The State Board of Education shall determine the components of personal financial literacy that will be covered in the curriculum. The State Board shall also review the high school standard course of study to determine in which course the new personal financial literacy curriculum can be integrated. (1955, c. 1372, art. 5, s. 20; art. 23, ss. 1, 5, 6; 1957, cc. 845, 1101; 1969, c. 487, ss. 1, 2; 1971, c. 356; 1973, c. 476, s. 128; 1975, c. 65, ss. 1, 2; 1977, 2nd Sess., c. 1256, s. 1; 1981, c. 423, s. 1; 1983, c. 656, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 81; c. 1103, s. 2; 1985, c. 479, ss. 55(c)(1), 55(c)(2); 1987, c. 630; c. 738, ss. 186(a), 186(b), 187(a); 1989, c. 370; c. 801; 1989 (Reg. Sess., 1990), c. 1066, s. 100; 1991, c. 636, s. 9; c. 689, ss. 196(a), 198; c. 739, s. 11; 1991 (Reg. Sess., 1992), c. 769, s. 1; c. 900, s. 75.1(h); 1993, c. 180, s. 1; c. 321, s. 139(d); c. 359, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 19.5(a); 1995, c. 371, s. 1; c. 450, ss. 5, 6, 7; c. 507, s. 17.14; c. 509, ss. 61, 62; c. 534, ss. 1, 2, 3; 1995 (Reg. Sess., 1996), c. 716, s. 8.6; 1996, 2nd Ex. Sess., c. 18, ss. 18.17(a), 18.24(a); 1997-18, s. 15(f); 1997-204, s. 2; 1997-273, ss. 1, 2; 1997-422, s. 1; 2001-363, ss. 1, 2(b), 2(d); 2003-284, s. 7.40(a), (b); 2005-155, s. 2; 2005-276, s. 7.59(a); 2006-69, s. 3(a); 2006-264, s. 54(a)-(c).)

NC Virtual Public School Program. — Session Laws 2006-66, s. 7.16(a)-(e) provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS will ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the NC Virtual Public School Program, eliminating course duplication.

"The Director shall report on the proposed consolidation and operating plan for 2007-2008 to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division no later than January 15, 2007. Consolidation will be completed by June 30, 2007. Notwithstanding G.S 143-23, the State Board of Education may move funds within the budget to implement the consolidation.

"(c) Subsequent to course consolidation, the Director will prioritize e-learning course offerings for students residing in rural and low-wealth county LEAs, in order to expand available instructional opportunities. First-available elearning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) The State Board of Education shall develop an allotment formula for funding e-learning, effective in the 2007-2008 fiscal year. In developing the formula, the Board shall consider, at a minimum, the following: (1) The number of students in average daily membership (ADM) projected to enroll in e-learning, (2) The projected cost of fees for e-learning courses, (3) The extent to which projected enrollment in e-learning courses affects funding required for other allotments that are based on ADM.

"(e) Any funds appropriated in this act for the NCVPS program that are not expended in fiscal year 2006-2007 shall be carried forward for expenditure in fiscal year 2007-2008. Any such funds that remain unexpended on June 30, 2008, shall revert to the General Fund."

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-69, s. 3(a), effective July 10, 2006, deleted "and includes appropriate modifications for the learning disabled, the academically or intellectually gifted students, and the students with discipline and emotional problems" at the end of subdivision (b)(1); and substituted "disabilities" for "special needs" in (b)(4).

Session Laws 2006-264, ss. 54(a)-(c), effective August 27, 2006, and applicable beginning with the 2007-2008 school year, in subdivision (e1)(1), substituted "HIV/AIDS" for "Acquired Immune Deficiency Syndrome (AIDS) virus infection" in sub-subdivision (e1)(1)k., and added the last paragraph; in subdivision (e1)(3), substituted "HIV/AIDS, that include emphasis" for "Acquired Immune Deficiency Syndrome (AIDS) virus infection, that includes emphasis" in the first sentence, inserted "when transmitted through sexual contact" following "sexually transmitted diseases," and substituted "HIV/AIDS, shall teach how alcohol and drug use lower inhibitions, which may lead to risky sexual behavior" for "Acquired Immune Deficiency Syndrome (AIDS)" in the second sentence, and deleted the former last sentence, which read "Any instruction concerning the causes of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), in cases where homosexual acts are a significant means of transmission, shall include the current legal status of those acts."; in (e1)(4)d., substituted "when transmitted through sexual contact, including HIV/AIDS" for "Acquired Immune Deficiency Syndrome (AIDS)"; added the last sentence in subdivision (e1)(8); and substituted "HIV/AIDS" for "Acquired Immune Deficiency Syndrome (AIDS)" throughout.

§ 115C-84.2. School calendar.

(a) School Calendar. — Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

(1a) Repealed by Session Laws 2004-180, s. 1, effective August 9, 2004.

(2) A minimum of 10 annual vacation leave days.

(3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.

(4) Five days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete instructional and classroom administrative duties. The local school administrative unit shall not impose any additional tasks on these days. The local board shall schedule one of these days at the beginning of the school year and one at the end of each academic quarter.

(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance.

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards shall designate at least seven days scheduled under subdivisions (4) and (5) of this subsection as days on which teachers may take accumulated vacation leave. Local boards may designate the remaining days scheduled in subdivisions (4) and (5) of this subsection as days on which teachers may take accumulated vacation leave, but local boards shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.

(b) Limitations. — The following limitations apply when developing the school calendar:

(1) The total number of teacher workdays for teachers employed for a 10 month term shall not exceed 195 days.

(2) The calendar shall include at least 42 consecutive days when teacher attendance is not required unless: (i) the school is a year-round school; or (ii) the teacher is employed for a term in excess of 10 months. At the request of the local board of education or of the principal of a school, a teacher may elect to work on one of the 42 days when teacher attendance is not required in lieu of another scheduled workday.

(3) School shall not be held on Sundays.

(4) Veterans Day shall be a holiday for all public school personnel and for all students enrolled in the public schools.

(c) Emergency Conditions. — During any period of emergency in any section of the State where emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools.

(d) Opening and Closing Dates. — Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10. On a showing of good cause, the State Board of Education may waive this requirement to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means that schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar.

(e) Nothing in this section prohibits a local board of education from offering supplemental or additional educational programs or activities outside the calendar adopted under this section. (1997-443, s. 8.38(c); 1998-212, s. 9.18(b); 1999-373, s. 1; 1999-463, Ex. Sess., s. 7A; 2003-8, s. 1; 2003-131, s. 1; 2004-180, s. 1; 2004-203, s. 44; 2006-264, s. 25.)

Editor's Note. —

Session Laws 2004-203, s. 44, effective August 17, 2004, deleted the last paragraph of subsection (d) which read: "Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days." However, there was no such paragraph in subsection (d), and the apparent intent was to delete the former last paragraph in subsection (a). Session Laws 2006-264, s. 25, repealed Session Laws 2004-203, s. 44, effective August 27, 2006.

Article 8B.

School-Based Management and Accountability Program.

Part 2. School-Based Management.

§ 115C-105.25. Budget flexibility.

(a) Consistent with improving student performance, a local board shall provide maximum flexibility to schools in the use of funds to enable the schools to accomplish their goals.

(b) Subject to the following limitations, local boards of education may transfer and may approve transfers of funds between funding allotment categories:

(1) In accordance with a school improvement plan accepted under G.S. 115C-105.27, State funds allocated for teacher assistants may be transferred only for personnel (i) to serve students only in kindergarten through third grade, or (ii) to serve students primarily in kindergarten through third grade when the personnel are assigned to an elementary school to serve the whole school. Funds allocated for teacher assistants may be transferred to reduce class size or to reduce the student-teacher ratio in kindergarten through third grade so long as the affected teacher assistant positions are not filled when the plan is amended or approved by the building-level staff entitled to vote on the plan or the affected teacher assistant positions are not expected to be filled on the date the plan is to be implemented. Any State funds appropriated for teacher assistants that were converted to certificated teachers before July 1, 1995, in accordance with Section 1 of Chapter 986 of the 1991 Session Laws, as rewritten by Chapter 103 of the 1993 Session Laws, may continue to be used for certificated teachers.

(2) In accordance with a school improvement plan accepted under G.S. 115C-105.27, (i) State funds allocated for classroom materials/instructional supplies/equipment may be transferred only for the purchase of textbooks; (ii) State funds allocated for textbooks may be transferred only for the purchase of instructional supplies, instructional equipment, or other classroom materials; and (iii) State funds allocated for noninstructional support personnel may be transferred only for teacher positions.

(2a) Up to three percent (3%) of State funds allocated for noninstructional support personnel may be transferred for staff development.

(3) No funds shall be transferred into the central office allotment category.

(4) Funds allocated for children with disabilities, for students with limited English proficiency, and for driver's education shall not be transferred.

(5) Funds allocated for classroom teachers may be transferred only for teachers of exceptional children, for teachers of at-risk students, and for authorized purposes under the textbooks allotment category and the classroom materials/instructional supplies/equipment allotment category.

(5a) Positions allocated for classroom teachers may be converted to dollar equivalents to contract for visiting international exchange teachers. These positions shall be converted at the statewide average salary for classroom teachers, including benefits. The converted funds shall be used only to cover the costs associated with bringing visiting international exchange teachers to the local school administrative unit through a State-approved visiting international exchange teacher program and supporting the visiting exchange teachers.

(6) Funds allocated for vocational education may be transferred only in accordance with any rules that the State Board of Education considers appropriate to ensure compliance with federal regulations.

(7) Funds allocated for career development shall be used in accordance with Section 17.3 of Chapter 324 of the 1995 Session Laws.

(8) Funds allocated for academically or intellectually gifted students may be used only (i) for academically or intellectually gifted students; (ii) to implement the plan developed under G.S. 115C-150.7; or (iii) in accordance with an accepted school improvement plan, for any purpose so long as that school demonstrates it is providing appropriate services to academically or intellectually gifted students assigned to that school in accordance with the local plan developed under G.S. 115C-150.7.

(9) Funds allocated in the Alternative Schools/At-Risk Student allotment shall be spent only for alternative learning programs, at-risk students, and school safety programs. (1995 (Reg. Sess., 1996), c. 716, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(h)-(k); 1998-212, s. 9.20(b); 1999-237, s. 8.25(c); 2001-424, s. 28.22; 2005-276, s. 7.22(a); 2006-69, s. 3(b).)

Effect of Amendments. — Session Laws 2006-69, s. 3.(b), effective July 10, 2006, substituted “disabilities” for “special needs” in subdivision (b)(4).

§ 115C-105.26. Waivers of State laws, rules, or policies.

(a) When included as part of a school improvement plan accepted under G.S. 115C-105.27, local boards of education shall submit requests for waivers of State laws, rules, or policies to the State Board of Education. A request for a waiver shall (i) identify the school making the request, (ii) identify the State laws, rules, or policies that inhibit the school’s ability to improve student performance, (iii) set out with specificity the circumstances under which the waiver may be used, and (iv) explain how the requested waiver will permit the school to improve student performance. Except as provided in subsection (c) of this section, the State Board shall grant waivers only for the specific schools for which they are requested and shall be used only under the specific circumstances for which they are requested.

(b) When requested as part of a school improvement plan, the State Board of Education may grant waivers of:

(1) State laws pertaining to class size and teacher certification; and

(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and G.S. 115C-325, health

and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.

(c) The State Board also may grant requests received from local boards for waivers of State laws, rules, or policies that affect the organization, duties, and assignment of central office staff only. However, none of the duties to be performed under G.S. 115C-436 may be waived.

(c1) The State Board also may grant requests received from local boards for waivers of State laws, rules, or policies that require that each local school administrative unit provide at least one alternative school or at least one alternative learning program.

(d) Notwithstanding subsections (b) and (c) of this section, the State Board shall not grant waivers of G.S. 115C-12(16)b. regarding the placement of State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board.

(e) Notwithstanding subsection (b) of this section, the State Board may grant requests received from local boards for waivers of State laws, rules, or policies pertaining to the placement of principals on the State salary schedule for public school administrators in order to provide financial incentives to encourage principals to accept employment in a school that has been identified as low-performing under G.S. 115C-105.37. The State Board shall act on requests under this subsection at the first Board meeting following receipt of each request.

(f) Except as provided in subsection (e) of this section, the State Board shall act within 60 days of receipt of all requests for waivers under this section.

(g) The State Board shall, on a regular basis, review all waivers it has granted to determine whether any rules should be repealed or modified or whether the Board should recommend to the General Assembly the repeal or modification of any laws. (1995 (Reg. Sess., 1996), c. 716, s. 3; 1999-237, s. 8.25(b); 2006-153, s. 2.)

Effect of Amendments. — Session Laws 2006-153, s. 2, effective July 1, 2006, and applicable to school improvement plans beginning with the 2007-2008 school year, substituted "size and teacher certification" for "size, teacher certification, and the duty-free period for classroom teachers under G.S. 115C-301.1" in subdivision (b)(1).

§ 115C-105.27. Development and approval of school improvement plans.

(a) In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants shall be elected by their respective groups by secret ballot. Unless the local board of education has adopted an election policy, parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation.

(b) The strategies for improving student performance:

(1) Shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while mentors and teachers mentored are meeting;

(1a) Shall, if the school serves students in kindergarten or first grade, include a plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when their child is not reading at grade level and is at risk of not reading at grade level by the time the child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read, strategies for teachers and parents to implement that will help students improve and expand their reading, and provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade level;

(2) Shall include a plan to address school safety and discipline concerns in accordance with the safe school plan developed under Article 8C of this Chapter;

(3) May include a decision to use State funds in accordance with G.S. 115C-105.25;

(4) Shall include a plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school;

(5) May include requests for waivers of State laws, rules, or policies for that school. A request for a waiver shall meet the requirements of G.S. 115C-105.26;

(6) Shall include a plan to provide a duty-free lunch period for every teacher on a daily basis or as otherwise approved by the school improvement team; and

(7) Shall include a plan to provide duty-free instructional planning time for every teacher under G.S. 115C-301.1, with the goal of providing an average of at least five hours of planning time per week.

(c) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the local board of education only if the proposed school improvement plan has the approval of a majority of the staff who voted on the plan.

(d) The local board of education shall accept or reject the school improvement plan. The local board shall not make any substantive changes in any school improvement plan that it accepts. If the local board rejects a school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board to accept or reject. If no school improvement plan is accepted for a school within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school. The General Assembly urges the local board to utilize the school's proposed school improvement plan to the maximum extent possible when developing such a plan.

(e) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans. (1989, c. 778, s. 3; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(b); 1993, c. 38, s. 1; c. 263, s. 2; c. 321, s. 144.2(b); 1995, c. 272, s. 3; c. 450, s. 13; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3; 1997-159, s. 1; 1997-443, s. 8.29(r)(2); 1999-271, s. 1; 1999-397, s. 1; 2000-67, s. 8.1; 2001-424, s. 28.30(c); 2006-153, s. 1.)

Effect of Amendments. — Session Laws 2006-153, s. 1, effective July 1, 2006, and applicable to school improvement plans beginning with the 2007-2008 school year, designated the previously undesignated paragraphs as subsections (a) through (e); added subdivisions (b)(6) and (7); and made a minor punctuation change.

ARTICLE 9.

Education of Children With Disabilities.

Part 1. State Policy.

§ 115C-106: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — This section was also amended by Session Laws 2006-203, s. 31, effective July 1, 2007 and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, which substituted "G.S. 143C-1-1" for "G.S. 143C-1" at the end of subsection (a). The section is set out above as repealed."

Part 1A. General Provisions.

§ 115C-106.1. State goal.

The goal of the State is to provide full educational opportunity to all children with disabilities who reside in the State. (1973, c. 1293, ss. 2-4; 1975, c. 563, ss. 1-5; 1977, c. 927, ss. 1, 2; 1979, 2nd Sess., c. 1295; 1981, c. 423, s. 1; 1997-443, s. 11A.47; 2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

CASE NOTES

***Editor's Note.** — The cases cited below were decided under former G.S. 115C-106.*

Factors Considered. — Where there was no evidence that statutorily required parties, under 20 U.S.C.S. § 1414(d)(1)(B), were absent during the individualized educational program (IEP) meetings, and defendant school district representatives visited the new site, gathered information, and found it was comparable and would meet plaintiff student's IEP goals, and the parents attended and participated in all meetings, and the goals of the IEP could be accomplished at the new facility, the student's claim under G.S. 115C-106 et seq. failed. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

Section requires more than federal law. — North Carolina apparently requires more than the Education of the Handicapped Act (EHA), 20 U.S.C. § 1400 to 1425. The special education program must provide the child with an equal opportunity to learn if that is reasonably possible, ensuring that the child has an opportunity to reach her full potential commensurate with the opportunity given other children. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Statute Did Not Apply to Federally-Run School. — North Carolina standard of a free appropriate public education (FAPE) under G.S. 115C-106(a) did not apply to the autistic student's action against the school located on an air force base because the school was federally-run, and therefore, the FAPE standard under 20 U.S.C.S. § 1401(a)(18)(B) applied. G. v. Fort Bragg Dependent Schs., 324 F.3d 240, 2003 U.S. App. LEXIS 5759 (4th Cir. 2003).

In an action against the Fort Bragg Dependent Schools under the Individuals with Disabilities in Education Act (IDEA), 20 U.S.C.S. § 1400 et seq., the federal standard embodied in the IDEA, rather than North Carolina's "full potential " standard under G.S. 115C-106(a), governed the Individualized Educational Program of an autistic student in the Fort Bragg Dependent Schools; there was no clear expression of Congressional intent to subject federal entities to state free appropriate public education standards referred to in 20 U.S.C.S. § 1401(a)(18)(B) in providing education under the IDEA.

OPINIONS OF ATTORNEY GENERAL

***Editor's Note.** — The opinions cited below were decided under former G.S. 115C-106.*

The selection of the LEA Representative required to be part of the IEP Team, under special education law and regulations, is ultimately a matter of local discretion, although such discretion must of course be exercised consistent with the potential role of the LEA Representative on any particular child's IEP Team. Such informed exercise of local discretion, on a case-by-case basis, is completely congruent with the goals of the IDEA. See opinion of Attorney General to Brad Sneeden Deputy Superintendent N. C. Department of Public Instruction, 1998 N.C.A.G. 50 (12/1/98).

How Conflict with Federal Law Resolved. — Section 7A-647(2)c [see now G.S. 7B-903, 7B-2502, 7B-2503, 7B-2506, 7B-2702, 7B-2704], as amended by Session Laws 1985, c. 777, appears on its face to be in conflict with 20 U.S.C. § 1415 and G.S. 115C-114 and 115C-116 and this section to the extent that it authorizes the county director of social services to make educational decisions for a handicapped child in the custody of a department of social services. This apparent conflict should be resolved by giving full effect to 20 U.S.C. § 1415. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-106.2. Purposes.

(a) The purposes of this Article are to (i) ensure that all children with disabilities ages three through 21 have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepares them for further education, employment, and independent living; (ii) ensure that the rights of these children and their parents are protected; and (iii) enablethe State Board of Education and local educational agencies to provide for the education of all children with disabilities.

(b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Article is to enable the State Board of Education and local educational agencies to implement IDEA in this State. If this Article is silent or conflicts with IDEA, and if IDEA has specific language that is mandatory, then IDEA controls.

(c) Notwithstanding any other section of this Article, the State Board of Education may set standards for the education of children with disabilities that are higher than those required by IDEA. (1973, c. 1293, ss. 2-4; 1975, c. 563, ss. 1-5; 1977, c. 927, ss. 1, 2; 1979, 2nd Sess., c. 1295; 1981, c. 423, s. 1; 1997-443, s. 11A.47; 2006-69, s. 2.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 115C-106.*

Equal Opportunity to Learn is All That is Required. — In North Carolina the special education program must provide the child with an equal opportunity to learn if that is reasonably possible, ensuring that the child has an opportunity to reach her full potential commensurate with the opportunity given other children. This standard does not require a school district to develop a "utopian educational program " for the student with special needs any more so than would be required if the student were not handicapped. CM ex rel. JM v. Board of Educ., 85 F. Supp. 2d 574, 1999 U.S. Dist. LEXIS 21334 (W.D.N.C. 1999), aff'd in part, rev'd in part on other grounds, and remanded, 241 F.3d 374 (4th Cir. N.C. 2001).

This section was not designed to require the development of a utopian educational program for handicapped students any more than the public schools are required to provide utopian educational programs for nonhandicapped students. Harrell v. Wilson County Schools, 58 N.C. App. 260, 293 S.E.2d 687.

The General Assembly intended to eliminate the effects of the handicap, at least to the extent that the child will be given an equal opportunity to learn if that is reasonably possible. Under this standard a handicapped child should be given an opportunity to achieve his full potential commensurate with that given other children. Harrell v. Wilson County Schools, 58 N.C. App. 260, 293 S.E.2d 687.

Section requires more than federal law. — North Carolina apparently requires more than the Education of the Handicapped Act (EHA), 20 U.S.C. § 1400 to 1425. The special education program must provide the child with an equal opportunity to learn if that is reasonably possible, ensuring that the child has an opportunity to reach her full potential commensurate with the opportunity given other children. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Statute Did Not Apply to Federally-Run School. — North Carolina standard of a free appropriate public education (FAPE) under G.S. 115C-106(a) did not apply to the autistic student's action against the school located on an air force base because the school was federally-run, and therefore, the FAPE standard under 20 U.S.C.S. § 1401(a)(18)(B) applied. G. v. Fort Bragg Dependent Schs., 324 F.3d 240, 2003 U.S. App. LEXIS 5759 (4th Cir. 2003).

In an action against the Fort Bragg Dependent Schools under the Individuals with Disabilities in Education Act (IDEA), 20 U.S.C.S. § 1400 et seq., the federal standard embodied in the IDEA, rather than North Carolina's "full potential " standard under G.S. 115C-106(a), governed the Individualized Educational Program of an autistic student in the Fort Bragg Dependent Schools; there was no clear expression of Congressional intent to subject federal entities to state free appropriate public education standards referred to in 20 U.S.C.S. § 1401(a)(18)(B) in providing education under the IDEA.

Failure of county and State boards to provide free appropriate public education to child who suffered from dyslexia was a violation of this section and the parallel federal statute, the Education for All Handicapped Children Act, 20 U.S.C. § 1400 to 1420. Hall v. Vance County Bd. of Educ., 774 F.2d 629 (4th Cir. 1985).

Noncustodial Parent Ordered to Pay Child's Special Educational Expenses Even Though Custodial Parent Failed to Seek Available Public Funding. — Although public funding may have been available for special education needs of child, but was not sought by custodial parent, court did not err in requiring noncustodial parent to pay costs of child's educational expenses in proportion to parent's gross income. Sikes v. Sikes, 98 N.C. App. 610, 391 S.E.2d 855 (1990).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-106.*

Educational programs operated by public schools for three- and four-year-old children are not subject to licensure and regulation by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, — N.C.A.G. — (October 3, 1990).

Educational programs for three- and four-year-old children housed in public school buildings but operated by private providers are subject to licensure and regulations by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, — N.C.A.G. — (October 3, 1990).

Educational programs operated by public schools for three- and four-year-old children are not subject to licensure and regulation by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, — N.C.A.G. — (October 3, 1990).

§ 115C-106.3. Definitions.

The following definitions apply in this Article:

(1) "Child with a disability" means a child with at least one disability who because of that disability requires special education and related services.

(2) "Disability" includes mental retardation; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; serious emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments, specific learning disability, or other disability as may be required to be included under IDEA. For a child ages three through seven, this term also includes developmental delay.

(3) "Dispute" means a disagreement between the parties.

(4) "Free appropriate public education" means special education and related services that:
   a. Are provided at public expense, under public supervision and direction, and without charge;
   b. Meet the standards of the State Board;
   c. Include an appropriate preschool, elementary school, or secondary school education in the State; and
   d. Are provided in conformity with an individualized education program.

(5) "Hearing officers" include administrative law judges as defined in G.S. 150B-2(1) and hearing review officers.

(6) "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and federal regulations adopted under this act.

(7) "IEP Team" is as defined in IDEA.

(8) "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, implemented, and revised consistent with IDEA and State law.

(9) "Infant or toddler with a disability" is as defined in IDEA.

(10) "Least restrictive environment" means to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(11) "Local educational agency" includes any of the following that provides special education and related services to children with disabilities:
   a. A local school administrative unit.
   b. A charter school.
   c. The Department of Health and Human Services.
   d. The Department of Correction.

e. The Department of Juvenile Justice and Delinquency Prevention.
f. Any other State agency or unit of local government.

(12) "Mediation" means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(13) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a dispute.

(14) "Parent" means:
a. A natural, adoptive, or foster parent;
b. A guardian, but not the State if the child is a ward of the State;
c. An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, and with whom the child lives;
d. An individual who is legally responsible for the child's welfare; or
e. A surrogate if one is appointed under G.S. 115C-109.2.

(15) "Party" or "Parties" means the local educational agency or the parents, or both.

(16) "Petition" means a request for a due process hearing as provided for under IDEA.

(17) "Preschool child with a disability" means a child with one or more disabilities who meets all of the following criteria:
a. Has reached his or her third birthday and whose parents have requested services from the public schools.
b. Is not eligible to enroll in public kindergarten.
c. Because of the disability, needs special education and related services in order to prepare the child to benefit from the educational programs provided by the public schools, beginning with kindergarten.

(18) "Related services" is as defined in IDEA.

(19) "Rules" includes rules, policies, and procedures. Rules as defined in G.S. 150B-2(8a) shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes.

(20) "Special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. The term includes instruction in physical education and instruction conducted in a classroom, the home, a hospital or institution, and other settings. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 23, 24; 1985, c. 479, s. 26(a);1985, c. 780, ss. 3, 4; 1989(Reg. Sess., 1990), c. 1003, s. 5; 1996, 2nd Ex. Sess., ch. 18, s. 18.24(b); 2006-69, s. 2.)

Legal Periodicals. — For essay, "Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference, " see 1991 Duke L.J. 166.

CASE NOTES

***Editor's Note.** — The cases cited below were decided under former G.S. 115C-108.*

Education and Habilitation Services Distinguished. — North Carolina law recognizes the difference between special education services and habilitation services. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Requested Services Held Not Required by Law. — In-home services sought by parents of 19-year-old autistic and moderately mentally handicapped child were not the kind of services which must be provided, under federal or North Carolina law, by the local education agency. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-108.*

Educational programs operated by public schools for three- and four-year-old children are not subject to licensure and regulation by Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

Educational programs for three- and four-year-old children housed in public school buildings but operated by private providers are subject to licensure and regulations by Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

State is not prohibited from purchasing day care services from day care programs operated by public schools, even though those programs are not licensed by Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

Sharing of Educational Records. — This section, G.S. 115C-110(a) and 115C-403(b) represent and embody an intention by the General Assembly that public agencies providing education to school age children share the educational records of children who move or are moved from one of those agencies to another. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

The selection of the LEA Representative required to be part of the IEP Team, under special education law and regulations, is ultimately a matter of local discretion, although such discretion must of course be exercised consistent with the potential role of the LEA Representative on any particular child's IEP Team. Such informed exercise of local discretion, on a case-by-case basis, is completely congruent with the goals of the IDEA. See opinion of Attorney General to Brad Sneeden Deputy Superintendent N. C. Department of Public Instruction, 1998 N.C.A.G. 50 (12/1/98).

§ 115C-107: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-107 was formerly codified in Part 1 of this Article.

Part 1B. Provision of Free Appropriate Public Education.

§ 115C-107.1. Free appropriate public education; ages.

(a) A free appropriate public education shall be made available to the following:

(1) All children with disabilities who reside in the State, who are the ages of three through 21, who have not graduated from high school, and who require special education and related services.

(2) Any child with a disability who is receiving special education and related services and who has not graduated from high school until the end of the school year in which that child reaches the age of 22.

(3) Children with disabilities who require special education and related services and who are suspended or expelled from school and entitled to continuing education services as provided in IDEA.

(b) A free appropriate public education is not required to be provided to infants and toddlers with disabilities. However, early intervention services shall be made available to these children under G.S. 143B-139.6A.

(c) If funds are made available, the State Board and the Secretary of Health and Human Services may adopt an agreement to allow the continuation of early intervention services for children with a disability who are at least three years old but before they enter kindergarten or are eligible to enter kindergarten. If an agreement is adopted under this subsection, then a free appropriate public education is not required to be provided to any child with a disability who continues to receive early intervention services in accordance with that agreement.

(d) Nothing in this Article requires a free appropriate public education to be made available to any individual aged 18 through 21 who, in the educational placement immediately before that individual's incarceration in an adult correctional facility, was not actually identified as being a child with a disability and did not have an IEP. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1989 (Reg. Sess., 1990), c. 1003, s. 5; 1997-443, s. 11A.118(a); 1998-202, s. 4(h); 2000-137, s. 4(k); 2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

Legal Periodicals. — For essay, "Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference, " see 1991 Duke L.J. 166."

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-111 and G.S. 115C-113.*

Failure of county and State boards to provide free appropriate public education to child who suffered from dyslexia was a violation of this section and the parallel federal statute, the Education for All Handicapped Children Act, 20 U.S.C. § 1400 to 1420. Hall v. Vance County Bd. of Educ., 774 F.2d 629 (4th Cir. 1985).

Special Education and Habilitation Services Distinguished. — North Carolina law recognizes the difference between special education services and habilitation services. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Requested Services Held Not Required by Law. — In-home services sought by parents of 19-year-old autistic and moderately mentally handicapped child were not the kind of services which must be provided, under federal or North Carolina law, by the local education agency. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

§ 115C-107.2. Duties of State Board of Education.

(a) The State Board of Education shall adopt rules to ensure that:

(1) The requirements of this Article and IDEA are met.

(2) All educational programs under the supervision of any local educational agency for children with disabilities meet all of the following requirements:

a. The programs are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities.

b. The programs meet the State Board's educational standards.

c. With respect to homeless children, the programs meet the requirements of 20 U.S.C. § 1431, McKinney-Vento Homeless Assistance Act.

(b) The rules adopted under subsection (a) of this section shall include rules that:

(1) Establish standards for the programs of special education to be administered by local educational agencies and by the State Board.

(2) Ensure that children with disabilities are educated in the least restrictive environment.

(3) Ensure that local school administrative units make available special education and related services to all preschool children with disabilities whose parents request these services.

(4) Provide for public hearings, adequate notice of these hearings, and an opportunity for comment from the general public before the adoption of the rules required by this Article.

(5) Are required in order to receive federal funding under IDEA.

(6) Provide that, where a local educational agency finds that appropriate services are available from other public agencies or private organizations, the local educational agency may contract for those services rather than provide them directly.

(7) Enable local educational agencies to identify, evaluate, place, and make other educational decisions for children with disabilities.

(8) Provide procedural safeguards for children with disabilities and their parents.

(9) Designate a person in the Department of Public Instruction who is charged with receiving and responding to notices or other legal documents under Part 1D of this Article.

(10) Support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(c) Rules adopted under this section shall be consistent with IDEA and shall comply with G.S. 115C-12(19). Local educational agencies, parents, and other individuals concerned with the education of children with disabilities shall be consulted in the development of rules adopted under this Article.

(d) The State Board shall develop forms for local educational agencies to use in order to comply with this Article. The forms must comply with G.S. 115C-12(19) and may be in an electronic format.

(e) The State Board shall provide technical assistance to local educational agencies at their request.

(f) The State Board shall develop any plans that meet the criteria of IDEA and are required to be submitted to the United States Department of Education.

(g) The State Board shall make available to hearing officers training related to IDEA and its legal interpretations in order to facilitate hearings and reviews under G.S. 115C-109.6. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1989 (Reg. Sess., 1990), c. 1003, s. 5; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-113.*

Obligation to Develop IEP. — School system had a legal obligation to fully develop an individualized educational program (IEP) for child following her release from the The Whitaker School, to present the IEP to petitioner upon petitioner's request, and to present school system's proposals in writing to petitioner, regardless of petitioner's request. Beaufort County Schs. v. Roach, 114 N.C. App. 330, 443 S.E.2d 339, cert. denied, 336 N.C. 602, 447 S.E.2d 384, 513 U.S. 989, 115 S. Ct. 486, 130 L. Ed. 2d 398 (1994).

Evaluation and Diagnosis. — Once a child has been referred for a diagnosis and evaluation, the local educational agency shall, "as soon as possible after receiving consent for evaluation " provide or cause to be provided a diagnosis and evaluation of the child. Beaufort County Schs. v. Roach, 114 N.C. App. 330, 443 S.E.2d 339, cert. denied, 336 N.C. 602, 447 S.E.2d 384, 513 U.S. 989, 115 S. Ct. 486, 130 L. Ed. 2d 398 (1994).

§ 115C-107.3. Child find.

(a) The Board shall require an annual census of children with disabilities, subdivided for "identified" and "suspected" children with disabilities, to be taken in each school year. Suspected children are those in the formal process of being evaluated or identified as children with disabilities. The census shall be conducted annually and shall be completed by October 15, submitted to the Governor and General Assembly and made available to the public by January 15 annually.

(b) In taking the census, the Board requires the cooperation, participation, and assistance of all local educational agencies. Therefore, each local educational agency shall cooperate and participate with and assist the Board in conducting the census.

(c) The census shall include the number of children identified and suspected with disabilities, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what local educational agency, the identity of each local educational agency having children with disabilities in its care, custody, management, jurisdiction, control, or programs, the number of children with disabilities being served by each local educational agency, and any other information or data that the Board requires. The census shall be of children with disabilities between the ages three through 21 but is not required to include children with disabilities that have graduated from high school. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2.)

§ 115C-107.4. Monitoring and enforcement.

(a) The State Board shall monitor all local educational agencies to determine compliance with this Article and IDEA. The State Board also shall monitor the effectiveness of IEPs in meeting the educational needs of children with disabilities.

(b) The State Board shall implement an effective and efficient system of incentives and sanctions for local educational agencies in order to improve results for children with disabilities and meet the requirements of this Article and IDEA. The system, which must be based on a continuum of recognition and sanctions, shall:

(1) Identify and recognize local educational agencies that achieve or exceed targets and indicators as determined by the State Board, demonstrate significant improvement over time, and show growth on targets and indicators as determined by each local educational agency.

(2) Provide consequences for local educational agencies that are substantially noncompliant with statutory and regulatory requirements under this Article and IDEA.

(c) The system of incentives developed under subsection (b) of this section may include commendations, public recognition, allocation of grant funds if available, and any other incentives as considered appropriate by the State Board.

(d) The system of sanctions developed under subsection (b) of this section shall include the following:

(1) Level One — Needs Assistance: When the State Board determines (i) a local school educational agency has been in noncompliance for two years and (ii) that agency needs assistance in implementing the requirements of this Article and IDEA, the State Board shall take one or more of the following actions:

a. The Board may direct the local educational agency to allocate additional time and resources for technical assistance and guidance related to areas of noncompliance.

b. The Board may impose special conditions on that agency's application for IDEA funds and receipt of State funds.

c. The Board may direct how that local educational agency utilizes IDEA and State funds to address the remaining findings of noncompliance. The local educational agency must track the use of these funds to show how the funds are targeted to address areas of noncompliance.

(2) Level Two — Needs Intervention: If the State Board determines (i) that the local educational agency has been in noncompliance for three years and (ii) that agency needs assistance in implementing this Article and IDEA, the following apply:

a. The Board may take any of the actions described in subdivision (1) of this subsection.

b. The Board shall withhold, in whole or in part, any further payments of IDEA and State funds to the agency.

c. The Board shall require the agency to enter into a compliance agreement.

(3) Level Three — Needs Substantial Intervention: In addition to the sanctions described in subdivisions (1) and (2) of this subsection, if at any time the State Board determines a local educational agency (i) needs substantial intervention in implementing the requirements of this Article and IDEA, or (ii) has established a substantial failure to comply with this Article and IDEA, the Board shall take one or more of the following actions:

a. The Board shall direct the agency to implement a compliance agreement, billed to that agency.

b. The Board shall recover IDEA and State funds.

c. The Board shall refer the agency for appropriate enforcement under State or federal law.

(e) In addition to the consequences required under subsections (b) and (d) of this section, the State Board shall develop sanctions for local educational agencies that fail to implement a corrective action or hearing decision. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2.)

§ 115C-107.5. Annual reports.

The State Board shall report annually to the Joint Legislative Education Oversight Committee on the implementation of this Article and the educational performance of children with disabilities. Each annual report shall include a copy of the following documents that were submitted, received, or made public during the year: (i) the most recent State performance plan and any amendments to that plan submitted to the Secretary of Education, (ii) compliance and monitoring reports submitted to the Secretary of Education, (iii) the annual report submitted to the Secretary of Education on the performance of the State under its performance plan, and (iv) any other information required under IDEA to be made available to the public. In addition, the annual report shall include an analysis of the educational performance of children with disabilities in the State and a summary of disputes under Part 1D of this Chapter. The report shall be filed no later than October 15 each year and may be filed electronically. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2.)

§ 115C-107.6. Duties of local educational agencies.

(a) Each local educational agency, in providing for the education of children with disabilities within its jurisdiction, must comply with IDEA and the rules adopted by the State Board under this Article. In addition, each local educational agency shall have in effect policies, procedures, and programs that are consistent with this Article, IDEA, and rules adopted by the State Board.

(b) No child with disabilities shall be prevented from attending the public schools of the local educational agency in which the child's parents or legal guardian resides or from which the child receives services or from attending any other public program of free appropriate public education based solely on the fact that the child has a disability. If it appears the child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention, the local school administrative unit shall confer with the appropriate Department of Health and Human Services or Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in that program and development of the child's individualized education program.

(c) No matriculation or tuition fees or other fees or charges shall be required or asked of children with disabilities or their parents except those fees or charges that are required uniformly of all public school pupils. The provision of a free appropriate public education within the facilities of the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention may not prevent that Department from charging for other services or treatment.

(d) Each child with a disability shall be educated in accordance with that child's IEP and in the least restrictive environment for that child.

(e) Each local educational agency may use the forms developed under G.S. 115C-107.2(d). (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-110.*

Applicability. — When a more generally applicable statute such as G.S. 115C-366(a) conflicts with a more specific, special statute such as this section, the special statute is viewed as an exception to the provisions of the general statute. Accordingly, the specific requirements of subsection (i) of this section control where they are in conflict with the general requirements of G.S. 115C-336(a). Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

Responsible Authority. — Under G.S. 115C-110(i), neither the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services nor the Department of Health and Human Services was the agency responsible for plaintiff student's educational placement or the provision of free appropriate public education, and letters from those agencies changed only the support services they provided; thus, persons outside the individualized educational programs process had not unilaterally changed the student's educational placement without following the procedures set forth by the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400 et seq. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

Standing to Raise Issue of Which Governmental Body to Pay Tuition. — The parents of a child with special educational needs failed to establish that their child was about to be denied continuance in a program appropriate to her special needs and did not have standing to raise the issue of whether the county board of education or the Department of Human Resources was responsible for tuition expenses of their child at a private school for handicapped children to which their child had been assigned by the county school system, since the private school had remained in operation at all times prior to and during the action. Linder v. Wake County Bd. of Educ., 50 N.C. App. 378, 273 S.E.2d 735 (1981).

Place of Actual Abode Determinative of Education Entitlement. — Where child's place of actual abode was clearly in county where he lived with his grandmother, he was a legal resident of the county so long as he continued to live there and was thus entitled to a free appropriate education in this county.

Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

Factors Considered. — Where there was no evidence that statutorily required parties, under 20 U.S.C.S. § 1414(d)(1)(B), were absent during the individualized educational program (IEP) meetings, and defendant school district representatives visited the new site, gathered information, and found it was comparable and would meet plaintiff student's IEP goals, and the parents attended and participated in all meetings, and the goals of the IEP could be accomplished at the new facility, the student's claim under G.S. 115C-110(a) failed. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-110.*

Sharing of Educational Records. — Sections 115C-109, 115C-403(b) and subsection (a) of this section represent and embody an intention by the General Assembly that public agencies providing education to school age children share the educational records of children who move or are moved from one of those agencies to another. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

The selection of the LEA Representative required to be part of the IEP Team, under special education law and regulations, is ultimately a matter of local discretion, although such discretion must of course be exercised consistent with the potential role of the LEA Representative on any particular child's IEP Team. Such informed exercise of local discretion, on a case-by-case basis, is completely congruent with the goals of the IDEA. See opinion of Attorney General to Brad Sneeden Deputy Superintendent N. C. Department of Public Instruction, 1998 N.C.A.G. 50 (12/1/98).

§ 115C-107.7. Discipline.

The policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations. (2006-69, s. 2.)

§ 115C-108: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-108 was formerly codified in Part 1 of this Article.

Part 1C. Interagency Coordination.

§ 115C-108.1. State Board lead agency.

(a) The Board shall cause all local educational agencies to provide special education and related services to children with disabilities in their care, custody, management, jurisdiction, control, or programs.

(b) The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with disabilities extends to and over the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

(c) All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction, and their divisions and agencies; all duties, responsibilities, rights, and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction, and their divisions and agencies. However, with respect to children with disabilities who are residents or patients of any State-operated or State-supported residential treatment facility, including a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the Department of Juvenile Justice and Delinquency Prevention, the Department of Correction, or any of their divisions and agencies, the Board may contract with the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise, and approve any plans for special education and related services to those residents.

(d) The Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with disabilities in their care, custody, or control. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on that department and when other procedural due process requirements, substantially equivalent to those required under this Article and IDEA, are assured in programs of special education and related services furnished to children with disabilities served by that department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

(e) The Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local school administrative units and the programs and agencies of the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention. (2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

§ 115C-108.2. Interlocal cooperation.

The Board, any two or more local educational agencies, and any other agency and any State department, agency, or division having responsibility for the education, treatment, or habilitation of children with disabilities may enter into interlocal cooperative undertakings under Part 1 of Article 20 of Chapter 160A of the General Statutes or into undertakings with a State agency such as the Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment, or habilitation of these children within the jurisdiction of the agency or unit, and shall do so when it is unable to provide the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are educationally appropriate to the children with disabilities for whose benefit the undertaking is made and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1997-443, s. 11A.118(a); 1998-202, s. 4(m); 2000-137, s. 4(p); 2006-69, s. 2.)

§ 115C-109: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-109 was formerly codified in Part 1 of this Article.

Part 1D. Procedural Safeguards.

§ 115C-109.1. Handbook for parents.

The State Board of Education shall make available to parents a handbook of procedural safeguards. This handbook for parents shall be made available at least once each school year, except that a copy also shall be given to the parent (i) upon the initial referral or parental request for an evaluation; (ii) upon the first occurrence of the filing of a petition under G.S. 115C-109.6 and IDEA; (iii) upon the parent's request; and (iv) upon any revision to the content of the handbook. This handbook for parents shall include a full explanation of the procedural safeguards under this Article and IDEA, be written in the native language of the parent unless it clearly is not feasible to do so, be written in an easily understood manner, and include information required under IDEA to be included.

The State Board shall place a current copy of the handbook for parents on its Internet Web site. (2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

§ 115C-109.2. Adult children with disabilities; surrogate parents.

(a) When a child with a disability reaches the age of 18, all of the following apply:

(1) Notices required under this Article shall be provided to both the child and the child's parent.

(2) All other rights accorded to parents under this Article and IDEA transfer to the child.

(3) The local educational agency shall notify the child and the child's parent of these transfer rights.

(b) Notwithstanding subsection (a) of this section, for a child with a disability who has reached the age of majority under State law and who has not been determined to be incompetent but is determined to not have the ability to provide informed consent with respect to his or her education program, the State Board shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility under this section.

(c) A reasonable effort must be made to appoint a surrogate for a child with a disability within 30 days of a determination that one of the following conditions exists and that the child needs a surrogate:

(1) The parents of that child are not known;

(2) The parents, after reasonable efforts, cannot be located; or

(3) The child is a ward of the State.

(d) A person must be eligible under IDEA to be appointed as a child's surrogate. (1987 (Reg. Sess., 1988), c. 1079, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 4(j); 2000-137, s. 4(m); 2006-69, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-116.*

Representation of Parentless Child's Educational Interests. — In those situations where the parents of a handicapped child are unavailable or unknown and the child is a ward of the State, the responsibility and authority for representing that child's educational interests rests with a surrogate parent, and not with the county director of social services. Further, subsection (c) and 20 U.S.C. § 1415(b)(1)(B) prohibit the county director of social services or any employee of a department of social services involved in the education or care of such child from serving as a surrogate parent in such circumstances. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-109.3. Access to records; opportunity for parents to participate in meetings.

(a) Each local educational agency shall provide an opportunity for the parents of a child with a disability to examine all records relating to that child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to that child.

(b) Local educational agencies may release the records of a child with a disability only as permitted under State or federal law. The parents of a child with a disability may have access to the child's records and may read, inspect, and copy all and any records, data, and information maintained by a local educational agency with respect to that child. Parents, upon their request, are entitled to have those records, data, and information fully explained, interpreted, and analyzed for them by the staff of the agency, unless specifically prohibited by court order. If a request is made under this subsection, the local educational agency shall honor the request within not more than 45 days after it is made or in time for the individual who made the request to prepare for a meeting under subsection (a) of this section, whichever is sooner.

(c) The student and the student's parents may add written explanations or clarifications to the records, data, and information and may request the expunction of incorrect, outdated, misleading, or irrelevant entries. If a local educational agency refuses to expunge incorrect, outdated, misleading, or irrelevant entries after having been asked to do so by the parent, the parent may appeal that decision under G.S. 115C-45(c)(2). (1977, c. 927, s. 1; 1981, c. 423, s. 1; 2006-69, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-114.*

Scope of Obligations of Surrogate Parent. — The General Assembly intended that the obligations of a surrogate parent have the scope specified by federal law. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

How Conflict with Federal Law Resolved. — Section 7A-647(2)c [see now G.S. 7B-903, 7B-2502, 7B-2503, 7B-2506, 7B-2702, 7B-2704], as amended by Session Laws 1985, c. 777, appears on its face to be in conflict with 20 U.S.C. § 1415 and G.S. 115C-106 and 115C-116 and this section to the extent that it authorizes the county director of social services to make educational decisions for a handicapped child in the custody of a department of social services. This apparent conflict should be resolved by giving full effect to 20 U.S.C. § 1415. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

Representation of Parentless Child's Educational Interests. — In those situations where the parents of a handicapped child are unavailable or unknown and the child is a ward of the State, the responsibility and authority for representing that child's educational interests rests with a surrogate parent, and not with the county director of social services. Further, G.S. 115C-116(c) and 20 U.S.C. § 1415(b)(1)(B) prohibit the county director of social services or any employee of a department of social services involved in the education or care of such child from serving as a surrogate parent in such circumstances. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

Transmittal of Educational Records. — Local school boards can and should transmit to the Division of Youth Services (DYS), and other Department of Human Resources (DHR) agencies providing educational services to school age children, any requested education records of juveniles committed to their custody or control. Once such education records are obtained by DYS or other DHR facilities they are confidential and must not be released except as permitted by the Family Educational Rights and Privacy Act. See opinion of C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

§ 115C-109.4. Mediation.

(a) It is the policy of this State to encourage local educational agencies and parents to seek mediation involving any dispute under this Article, including matters arising before or after filing a petition under G.S. 115C-109.6.

(b) Mediation under this section must meet the following requirements:

(1) The mediation must be voluntary on the part of both parties.

(2) Mediation shall not be used to deny or delay a parent's right to an impartial hearing under G.S. 115C-109.6, or to deny any other rights afforded under this Article or IDEA.

(3) The mediation shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The State Board may establish procedures to offer to parties that do not choose to use the mediation process an opportunity to meet with a disinterested party, as provided under IDEA, who can encourage the use and explain the benefits of the mediation process to the parties. This meeting must be at a time and location convenient to the parents.

(d) The State Board shall maintain a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services. When mediation is requested, the Exceptional Children Division of the Department of Public Instruction shall assign a mediator from this list of mediators.

(e) The State shall bear the cost of the mediation process, including the costs of meetings described under subsection (c) of this section, unless the parties opt to select a mediator other than the mediator assigned under subsection (d) of this section or if the parties opt to use an alternative method of dispute resolution.

(f) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(g) Evidence of statements made and conduct occurring in a mediation are confidential, are not subject to discovery, and are inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. Mediators shall not be compelled in any civil proceeding to testify or produce evidence concerning statements made and conduct occurring in a mediation.

(h) When resolution is reached to resolve the dispute through the mediation process, the parties shall execute a legally binding agreement that:

(1) Sets forth the agreement.

(2) States that all discussions that occurred during the mediation process are confidential and may not be used as evidence in any subsequent impartial hearing under G.S. 115C-109.6 or in any civil proceeding.

(3) Is signed by both the parent and a representative of the local educational agency who has the authority to bind that agency.

(4) Is enforceable in any State administrative forum provided for in IDEA, any State court of competent jurisdiction, or in a district court of the United States.

(i) In addition to mediation as provided by this section, the parties may participate in a mediated settlement conference as provided by G.S. 150B-23.1. In addition, the parties may agree to use other dispute resolution methods or to use mediation in other circumstances, including after a request for formal administrative review is filed, to the extent permitted under State and federal law. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1079, s. 1; 1989, c. 362; 1989 (Reg. Sess., 1990), c. 1058; 1991, c. 540, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 27; 1993, c. 270, s. 1; 1997-115, s. 1; 2006-69, s. 2.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-116.*

Construction with Other Laws. — The court held that the 60-day limitations period in G.S. 150B-23 is the period associated with this section, and rejected the idea that North Carolina's catch-all three-year statute of limitations for statutory actions for which no limitations period is otherwise provided, pursuant to G.S. 1-52(2), constituted a better borrowing choice and one more consistent with federal policies. CM v. Board of Educ., 241 F.3d 374, 2001 U.S. App. LEXIS 2555 (4th Cir. 2001), cert. denied, 534 U.S. 818, 122 S. Ct. 48, 151 L. Ed. 2d 18 (2001).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *The opinions cited below were decided under former G.S. 115C-116.*

Scope of Obligations of Surrogate Parent. — The General Assembly intended that the obligations of a surrogate parent have the scope specified by federal law. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

Representation of Parentless Child's Educational Interests. — In those situations where the parents of a handicapped child are unavailable or unknown and the child is a ward of the State, the responsibility and authority for representing that child's educational interests rests with a surrogate parent, and not with the county director of social services. Further, subsection (c) and 20 U.S.C. § 1415(b)(1)(B) prohibit the county director of social services or any employee of a department of social services involved in the education or care of such child from serving as a surrogate parent in such circumstances. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-109.5. Prior written notice.

(a) The local educational agency shall provide prompt written notice to parents whenever that agency proposes to initiate or change, or refuses to initiate or change (i) the identification, evaluation, or educational placement of a child, or (ii) the provision of a free appropriate public education to a child with a disability. The local educational agency shall document that all required notices have been sent to and received by parents.

(b) This prior written notice shall be in the native language of the parents, unless it clearly is not feasible to translate it, and shall contain all of the following information:

(1) A description of the action proposed or refused by the local educational agency.

(2) An explanation of why the local educational agency proposes or refuses to take the action and a description of each evaluation procedure,

assessment, record, or report that agency used as a basis for the proposed or refused action.

(3) A statement that the parent of a child with a disability has protection under the procedural safeguards of this Article and IDEA and, if this notice is not the initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained.

(4) Sources for parents to contact to obtain assistance in understanding this Article and IDEA.

(5) A description of other options considered by the IEP Team and the reason why those options were rejected.

(6) A description of the factors that are relevant to the local educational agency's proposal or refusal.

(7) Any other information required to be included under IDEA. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1079, s. 1; 1989, c. 362; 1989 (Reg. Sess., 1990), c. 1058; 1991, c. 540, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 27; 1993, c. 270, s. 1; 1997-115, s. 1; 2006-69, s. 2.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-116.*

Construction with Other Laws. — The court held that the 60-day limitations period in G.S. 150B-23 is the period associated with this section, and rejected the idea that North Carolina's catch-all three-year statute of limitations for statutory actions for which no limitations period is otherwise provided, pursuant to G.S. 1-52(2), constituted a better borrowing choice and one more consistent with federal policies. CM v. Board of Educ., 241 F.3d 374, 2001 U.S. App. LEXIS 2555 (4th Cir. 2001), cert. denied, 534 U.S. 818, 122 S. Ct. 48, 151 L. Ed. 2d 18 (2001).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *The opinions cited below were decided under former G.S. 115C-116.*

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Representation of Parentless Child's Educational Interests. — In those situations where the parents of a handicapped child are unavailable or unknown and the child is a ward of the State, the responsibility and authority for representing that child's educational interests rests with a surrogate parent, and not with the county director of social services. Further, subsection (c) and 20 U.S.C. § 1415(b)(1)(B) prohibit the county director of social services or any employee of a department of social services involved in the education or care of such child from serving as a surrogate parent in such circumstances. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-109.6. Impartial due process hearings.

(a) Any party may file with the Office of Administrative Hearings a petition to request an impartial hearing with respect to any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education of a child, or a manifestation determination. The party filing the petition must notify the other party and the person designated under G.S. 115C-107.2(b)(9) by simultaneously serving them with a copy of the petition.

(b) Notwithstanding any other law, the party shall file a petition under subsection (a) of this section that includes the information required under IDEA and that sets forth an alleged violation that occurred not more than one year before the party knew or reasonably should have known about the alleged action that forms the basis of the petition. The issues for review under this section are limited to those set forth in subsection (a) of this section. The party requesting the hearing may not raise issues that were not raised in the petition unless the other party agrees otherwise.

(c) The one-year restriction in subsection (b) of this section shall not apply to a parent if the parent was prevented from requesting the hearing due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the petition, or (ii) the local educational agency's withholding of information from the parent that was required under State or federal law to be provided to the parent.

(d) The hearing shall be conducted in the county where the child attends school or is entitled to enroll under G.S. 115C-366, unless the parties mutually agree to a different venue.

(e) The hearing shall be closed to the public unless the parent requests in writing that the hearing be open to the public.

(f) Subject to G.S. 115C-109.7, the decision of the administrative law judge shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. Following the hearing, the administrative law judge shall issue a written decision regarding the issues set forth in subsection (a) of this section. The decision shall contain findings of fact and conclusions of law. Notwithstanding Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and is not subject to further review unless appealed to the Review Officer under G.S. 115C-109.9.

(g) A copy of the administrative law judge's decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitation period for appeal as set forth in G.S. 115C-109.9.

(h) In addition to the petition, the parties shall simultaneously serve a copy of all pleadings, agreements, and motions under this Part with the person designated by the State Board under G.S. 115C-107.2(b)(9). The Office of Administrative Hearings shall simultaneously serve a copy of all orders and decisions under this Part with the person designated by the State Board under G.S. 115C-107.2(b)(9).

(i) Nothing in this section shall be construed to preclude a parent from filing a separate due process petition on an issue separate from a petition already filed.

(j) The State Board, through the Exceptional Children Division, and the State Office of Administrative Hearings shall develop and enter into a binding memorandum of understanding to ensure compliance with the statutory and regulatory procedures and timelines applicable under IDEA to due process hearings and to hearing officers' decisions, and to ensure the parties' due process rights to a fair and impartial hearing. This memorandum of understanding shall be amended if subsequent changes to IDEA are made. The procedures and timelines shall be made part of the Board's procedural safeguards that are made available to parents and the public under G.S. 115C-109.1 and G.S. 115C-109.5. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1079, s. 1; 1989, c. 362; 1989 (Reg. Sess., 1990), c. 1058; 1991, c. 540, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 27; 1993, c. 270, s. 1; 1997-115, s. 1; 2006-69, s. 2.)

Editor's Note. — Session Laws 2006-69, s. 6(a), (b) provides: "(a) The State Board of Education, through the Division of Exceptional Children and the Office of Administrative Hearings, shall develop its memorandum of understanding as required under G.S. 115C-109.6(j), as created in Section 2 of this act, by October 31, 2006. The memorandum of understanding shall establish procedures and timelines that are efficient and meet the criteria of IDEA so that impartial hearings are expeditiously handled. At the same time, the procedures and timelines should recognize there are some complicated issues that may require additional time to resolve. In particular, this memorandum should address at least the following:

"(1) The reasons, number of days, and means for providing notice to parties.

"(2) When a petition is initiated for the purpose of determining when a decision shall be reached. Specifically, this shall address when mediation is begun before and after a petition is filed and when no mediation is begun.

"(3) Whether mediated conferences subject to Chapter 150B of the General Statutes are appropriate under IDEA and, if so, when they should occur and how they will affect the timelines.

"(4) The number of extensions to be allowed and the basis on which an extension may be granted.

"(5) The standard of review for cases going to review officers.

"(6) Any other procedural or tolling issue that the State Board of Education or the Office of Administrative Hearings considers necessary to address.

"(b) The State Board and the Office of Administrative Hearings shall report jointly to the House Select Committee on the Education of Students with Disabilities by November 15, 2006, on the memorandum of understanding. This report shall make any recommendations as to funding issues that must be resolved or statutory changes that are needed, or both, in order to implement the memorandum of understanding."

CASE NOTES

***Editor's Note.** — The cases cited below were decided under former G.S. 115C-116.*

Federal Interpretation Controlling. — To the extent that North Carolina's interpretation of the authority of a hearing officer is a material variation from the federal district court's interpretation of 20 U.S.C. § 1415(b)(1)(E), the federal version must control, because it sets forth the minimum procedural safeguards intended by Congress to be followed by State and local agencies receiving federal assistance when making educational placement for handicapped children. S-1 ex rel. P-1 v. Spangler, 650 F. Supp. 1427 (M.D.N.C. 1986), vacated, 832 F.2d 294 (4th Cir. 1987).

Administrative Hearing and Decision Required. — The procedural safeguards embodied in G.S. 1415(b)(1)(E) of the Education for All Handicapped Children Act (EAHCA), 20 U.S.C. § 1401 et seq., required defendant's city board of education and hearing officer to conduct an administrative hearing and render a decision in that hearing on plaintiffs' claim for tuition reimbursement. S-1 ex rel. P-1 v. Spangler, 650 F. Supp. 1427 (M.D.N.C. 1986), vacated, 832 F.2d 294 (4th Cir. 1987).

Failure to Follow Time Limitations. — Plaintiffs who did not file a petition for a contested case under this section within the time limit prescribed by G.S. 150B-23, abandoned the process and sought relief in the courts without exhausting the available administrative remedies; therefore, they were barred from seeking relief in federal district court. Glen ex rel. Glen v. Charlotte-Mecklenburg Sch. Bd. of Educ., 903 F. Supp. 918 (W.D.N.C. 1995).

OPINIONS OF ATTORNEY GENERAL

***Editor's Note.** — The opinions cited below were decided under former G.S. 115C-116.*

How Conflict with Federal Law Resolved. — Section 7A-647(2)c [see now G.S. 7B-903, 7B-2502, 7B-2503, 7B-2506, 7B-2702, 7B-2704], as amended by Session Laws 1985, c. 777, appears on its face to be in conflict with 20 U.S.C. § 1415 and G.S. 115C-106, 115C-114, and 115C-116 to the extent that it authorizes the county director of social services to make educational decisions for a handicapped child in the custody of a department of social services. This apparent conflict should be resolved by giving full effect to 20 U.S.C. § 1415. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-109.7. Resolution session.

(a) Within 15 days of receiving notice of the parent's petition filed under G.S.

115C-109.6 and before the opportunity for an impartial hearing, the local educational agency shall convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the petition. This meeting shall include a representative of the agency who has decision-making authority on behalf of that agency and may not include an attorney of the local educational agency unless the parent is accompanied by an attorney. If the parent plans to be accompanied by an attorney under this section, the parent must give prior written notice of this fact to the agency. The purposes of the meeting are (i) for the parent to have an opportunity to discuss the petition and the facts that form the basis of the petition and (ii) for the local educational agency to have the opportunity to resolve the dispute.

(b) The parent and the local educational agency jointly may agree in writing to waive the meeting under subsection (a) of this section or to use the mediation process described in G.S. 115C-109.4.

(c) If the local educational agency does not resolve the dispute to the satisfaction of the parents within 30 days of the agency's receipt of the petition, the impartial hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall commence.

(d) If a resolution is reached to resolve the dispute at a meeting under subsection (a) of this section, the parties shall execute a legally binding agreement that is:

(1) Signed by both the parent and a representative of the local educational agency who has the authority to bind the agency;
(2) Enforceable in any State administrative forum provided for in IDEA, any State court of competent jurisdiction, or in a district court of the United States; and
(3) Filed with the person designated by the State Board to receive notices and with the Office of Administrative Hearings.

(e) If the parties execute an agreement under subsection (d) of this section, either party may void the agreement by providing written notice within three business days of the agreement's execution to the person designated by the State Board to receive notices, the Office of Administrative Hearings, and the other party. Notwithstanding subsection (c) of this section, upon receipt of this notice, the impartial hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall commence. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1079, s. 1; 1989, c. 362; 1989 (Reg. Sess., 1990), c. 1058; 1991, c. 540, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 27; 1993, c. 270, s. 1; 1997-115, s. 1; 2006-69, s. 2.)

CASE NOTES

***Editor's Note.** — The cases cited below were decided under former G.S. 115C-116.*

Federal district court properly followed federal procedural law in reviewing independently both federal and State law special education claims. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Failure to Follow Time Limitations. — Plaintiffs who did not file a petition for a contested case under this section within the time limit prescribed by G.S. 150B-23, abandoned the process and sought relief in the courts without exhausting the available administrative remedies; therefore, they were barred from seeking relief in federal district court. Glen ex rel. Glen v. Charlotte-Mecklenburg Sch. Bd. of Educ., 903 F. Supp. 918 (W.D.N.C. 1995).

§ 115C-109.8. Procedural issues.

(a) In matters alleging a procedural violation, the hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (i) impeded the child's right to a free appropriate public education; (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefits.

(b) A hearing officer may order a local educational agency to comply with procedural requirements under this Article and IDEA. (2006-69, s. 2.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-116.*

Federal Interpretation Controlling. — To the extent that North Carolina's interpretation of the authority of a hearing officer is a material variation from the federal district court's interpretation of 20 U.S.C. § 1415(b)(1)(E), the federal version must control, because it sets forth the minimum procedural safeguards intended by Congress to be followed by State and local agencies receiving federal assistance when making educational placement for handicapped children. S-1 ex rel. P-1 v. Spangler, 650 F. Supp. 1427 (M.D.N.C. 1986), vacated, 832 F.2d 294 (4th Cir. 1987).

§ 115C-109.9. Review by review officer; appeals.

(a) Any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board under G.S. 107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section. The Review Officer conducting this review shall make an independent decision upon completion of the review. The decision of the Review Officer becomes final unless an aggrieved party brings a civil action under subsection (d) of this section. A copy of the decision shall be served upon each party, and a copy shall be furnished to the attorneys of record and the Office of Administrative Hearings. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitation period for filing a civil action under subsection (d) of this section.

(b) A Review Officer shall be an educator or other professional who is knowledgeable about special education and who possesses other qualifications as may be established by the State Board of Education. No person may be appointed as a Review Officer if that person is an employee of the State Board of Education, the Department of Public Instruction, or the local educational agency that has been involved in the education or care of the child whose parents have filed the petition.

(c) The State Board may enforce the final decision of the administrative law judge under G.S. 115C-109.6, if not appealed under this section, or the final decision of the Review Officer, by ordering a local educational agency:

(1) To provide a child with appropriate education;
(2) To place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or
(3) To reimburse parents for reasonable private school placement costs in accordance with this Article and IDEA when it is determined that the local educational agency did not offer or provide the child with appropriate education and the private school in which the parent placed the child was an approved school and did provide the child an appropriate education.

(d) Any party that does not have the right to appeal under this Part and any party who is aggrieved by the decision of the Review Officer under this section may institute a civil action in State court within 30 days after receipt of the notice of the decision or in federal court as provided in 20 U.S.C. § 1415.

(e) Except as provided under IDEA, upon the filing of a petition under G.S. 115C-109.6 and during the pendency of any proceedings under this Part, the child must remain in the child's then-current educational placement or, if applying for initial admission to a public school, the child must be placed in the public school. Notwithstanding this subsection, the parties may agree in writing to a different educational placement for the child during the pendency of any proceedings under this Part. (2006-69, s. 2.)

§ **115C-110:** Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-110 was formerly codified in Part 1 of this Article.

Part 1E. Special Education and Related Services Personnel.

§ 115C-110.1. Teacher qualifications.

The Board shall adopt rules covering the qualifications of and standards for licensure of teachers, teacher assistants, speech-language pathologists, school psychologists, and others involved in the education and training of children with disabilities. (2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

§ 115C-110.2. Interpreters/transliterators.

Each interpreter or transliterator employed by a local educational agency to provide services to hearing-impaired students must annually complete 15 hours of job-related training that has been approved by the local educational agency. (2002-182, s. 6; 2003-56, s. 3; 2006-69, s. 2.)

Adoption of temporary rules by North Carolina Interpreter and Transliterator Licensing Board. — Session Laws 2003-56, s. 4, provides: "Notwithstanding G.S. 150B-21.1(a)(1), the North Carolina Interpreter and Transliterator Licensing Board may adopt temporary rules to implement S.L. 2002-182 until January 1, 2004."

§ 115C-110.3. through 115C-110.5. [Reserved].

§ **115C-111:** Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-111 was formerly codified in Part 2 of this Article.

Part 1F. Budgeting; Funds.

§ 115C-111.1. Out-of-state students; eligibility for State funds.

Notwithstanding any policy or rule adopted by the State Board of Education, if a local school administrative unit provides services to a student under a current IEP from another state while a determination is being made regarding the student's eligibility for services as a child with disabilities in North Carolina, the local school administrative unit is entitled to receive State funding to serve the student while the determination is being made. If the student is later determined not to qualify for services in North Carolina, the local school administrative unit is not required to repay State funds received while the determination is being made. (1997-117, s. 1; 2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

§ 115C-111.2. Contracts with private service providers.

Local educational agencies furnishing special education and related services to children with disabilities may contract with private special education facilities or service providers to furnish any of these services that the public providers are unable to furnish. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 2006-69, s. 2.)

§ 115C-111.3. Cost of education of children in group homes, foster homes, etc.

(a) Notwithstanding any other State law and without regard for the place of domicile of a parent, the cost of a free appropriate public education for a child with disabilities who is placed in or assigned to a group home or foster home, under State and federal law, shall be borne by the local board of education in which the group home or foster home is located. However, the local school administrative unit in which a child is domiciled shall transfer to the local school administrative unit in which the institution is located an amount equal to the actual local cost in excess of State and federal funding required to educate that child in the local school administrative unit for the fiscal year after all State and federal funding has been exhausted.

(b) The State Board of Education shall use State and federal funds appropriated for children with disabilities to establish a reserve fund to reimburse local boards of education for the education costs of children assigned to group homes or other facilities as provided in subsection (a) of this section. Local school administrative units may submit a Special State Reserve Program application for foster home or group home children whose special education and related services costs exceed the per child group home allocation.

(c) The Department shall review the current cost of children with disabilities served in the local school administrative units with group homes or foster homes to determine the actual cost of services. (1981, c. 859, s. 29.7; 2002-164, s. 2; 2003-294, s. 1; 2006-69, s. 2.)

Editor's Note. — Session Laws 2002-164, s. 3, as amended by Session Laws 2003-294, s. 5, provides: "The State Board of Education shall provide for a local school administrative unit to request funds from the Group Homes Program for Children with Disabilities if a child assigned to that unit was not in that unit's April child count for children with disabilities or the average daily membership for the previous school year. The local school administrative unit shall receive full school year funding upon the local school unit's request for group home or foster home program funds. These funds may not be requested except by a local school administrative unit."

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *The opinion cited below was decided under former G.S. 115C-140.1.*

Right to Attend Only Schools of District of Domicile. — Except for certain limited exceptions in this section and G.S. 115C-366.2, principally concerning children in foster or group homes, a student has a right to attend only the schools of the school system within which the student, his parents or legal guardian are domiciled. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

§ 115C-111.4. Nonreduction.

Notwithstanding any of the other provisions of this Article, it is the intent of the General Assembly that funds appropriated by it for the operation of programs of special education and related services by local school administrative units not be reduced; rather, that adequate funding be made available to meet the special educational and related services needs of children with disabilities, without regard to which local educational agency has the child in its care, custody, control, or program. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 2006-69, s. 2.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-142.*

Special Education Teachers Not Given Greater Protection Against Dismissal. — The General Assembly did not intend this section to provide special education teachers with greater protection against dismissal due to a reduction-in-force than that provided other career teachers. Instead, the legislature intended that this section benefit special education students; the section was intended to prevent funds appropriated for special education from being used for other purposes, and was not designed to provide enhanced job protection for special education teachers. Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

§ 115C-111.5. Allocation of federal funds.

Whenever any federal monies for the special education and related services for children with disabilities are made available, these funds shall be allocated according to a formula designed by the Board consistent with federal laws and regulations. This formula shall ensure equitable distribution of resources and shall be implemented as funds are made available from federal and State appropriations. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 2006-69, s. 2.)

§ 115C-111.6. Obligation to provide services for preschool children with disabilities.

State funds appropriated to the public schools to implement preschool services for children with disabilities under this Article and IDEA shall be used to provide special education and related services to preschool children with disabilities. These State funds shall be used to supplement and not supplant existing federal, State, and local funding for the public schools.

Preschool children with disabilities will continue to be served by all other State funds to which they are otherwise entitled. (2006-69, s. 2.)

§ 115C-112: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-112 was formerly codified in Part 2 of this Article.

Part 1G. Council on Educational Services for Exceptional Children.

§ 115C-112.1. Establishment; organization; powers and duties.

(a) There is hereby established an Advisory Council to the State Board of Education to be called the Council on Educational Services for Exceptional Children.

(b) The Council shall consist of a minimum of 24 members to be appointed as follows: four ex officio members; one individual with a disability and one representative of a private school appointed by the Governor; one member of the Senate and one parent of a child with a disability between the ages of birth and 26 appointed by the President Pro Tempore of the Senate; one member of the House of Representatives and one parent of a child with a disability appointed by the Speaker of the House of Representatives; and 14 members appointed by the State Board of Education. The State Board shall appoint members who represent individuals with disabilities, teachers, local school administrative units, institutions of higher education that prepare special education and related services personnel, administrators of programs for children with disabilities, charter schools, parents of children with disabilities, a State or local official who carries out activities under the federal McKinney-Vento Homeless Assistance Act, vocational, community, or business organizations concerned with the provision of transition services, and others as required by IDEA. The majority of members on the Council shall be individuals with disabilities or parents of children with disabilities. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The Board shall adopt rules to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of Health and Human Services or the Secretary's designee.
(2) The Secretary of Juvenile Justice and Delinquency Prevention or the Secretary's designee.
(3) The Secretary of Correction or the Secretary's designee.
(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education is two years. The term for members appointed by the State Board of Education is four years. No person shall serve more than two consecutive four-year terms.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly.

(c) The Council shall meet in offices provided by the Department of Public Instruction on a date to be agreed upon by the members of the Council from meeting to meeting. The Council shall meet no less than once every three months. The Department of Public Instruction shall provide the necessary secretarial and clerical staff and supplies to accomplish the objectives of the Council.

(d) The Council shall:

(1) Advise the Board with respect to unmet needs within the State in the education of children with disabilities.
(2) Comment publicly on rules, policies, and procedures proposed by the Board regarding the education of children with disabilities.

(3) Assist the Board in developing evaluations and reporting on data to the Secretary of Education under the federal Individuals with Disabilities Education Act (IDEA), as amended.

(4) Advise the State Board in developing corrective action plans to address findings identified in federal monitoring reports required under the federal Individuals with Disabilities Education Act (IDEA), as amended.

(5) Advise the State Board in developing and implementing policies relating to the coordination of services for children with disabilities.

(6) Carry out any other responsibility as designated by federal law or the State Board. (1973, c. 1079, ss. 1-4; 1977, c. 646, ss. 1-5, 1981, c. 423, s. 1; 1991, c. 739, s. 12; 1991 (Reg. Sess., 1992), c. 1038, s. 13; 1997-443, s. 11A.118(a); 1998-202, s. 4(l); 2000-137, s. 4(o); 2001-424, s. 28.29(a); 2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

Part 2. Nondiscrimination in Education.

§§ **115C-113 through 115C-115:** Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 3. Appeals.

§ **115C-116:** Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 5. Council on Educational Services for Exceptional Children.

§ **115C-121:** Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 6. Range of Services Available.

§ **115C-122:** Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 8. State School for Sight-impaired Children.

§ **115C-129:** Reserved for future codification purposes.

Part 10. State and Local Relationships.

§ **115C-139:** Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

§ 115C-140: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

§ 115C-140.1: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 11. Rules and Regulations.

§ 115C-141: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 12. Nonreduction Provision.

§ 115C-142: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 13. Budget Analysis and Departmental Funding.

§ 115C-143: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1282, s. 29.

§ 115C-144: Repealed by Session Laws 1997-18, s. 7.

§ 115C-145: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

§ 115C-146: Reserved for future codification purposes.

Part 14. Handicapped Children, Ages Three to Five.

§§ 115C-146.1 through 115C-146.4: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

§§ 115C-147, 115C-148: Reserved for future codification purposes.

Article 9A.

Children with Chemical Dependency.

§ 115C-149. Policy. Chemically dependent children excluded from provisions of Article 9.

The General Assembly of North Carolina hereby declares that the policy of the State is to ensure that an appropriate education is provided for drug and alcohol addicted children; however, drug and alcohol addicted children are not "children with disabilities" within the meaning of G.S. 115C-106.3(1) unless because of some other condition they meet that definition. (1989, c. 316, s. 1; 2006-69, s. 3(c).)

Effect of Amendments. — Session Laws 2006-69, s. 3.(c), effective July 10, 2006, substituted "disabilities" for "special needs" and "G.S. 115C-106.3(1)" for "G.S. 115C-109."

ARTICLE 16.

Optional Programs.

Part 3. Summer Schools.

§ 115C-233. Operation of summer schools.

Each local school administrative unit may establish and maintain summer schools. Such summer schools as may be established shall be administered by local boards of education and shall be conducted in accordance with standards developed by the State Board of Education. The standards so developed shall specify the requirements for approved curriculum, the qualifications of the personnel, the length of the session, and the conditions under which students may be granted credit for courses pursued during a summer school. In determining the eligibility of students for admission to summer schools, boards of education shall be governed by Article 9 of this Chapter, and G.S. 115C-366(b) and 115C-367 to 115C-370. Boards of education of local school administrative units may provide for summer schools from funds made available for that purpose by the State Board of Education, funds appropriated to the local school administrative unit by the tax-levying authority, and from any other revenues available for the purpose. (1975, c. 437, s. 11; 1981, c. 423, s. 1; 2006-69, s. 3(d).)

Effect of Amendments. — Session Laws 2006-69, s. 3(d), effective July 10, 2006, substituted "Article 9 of this Chapter, and G.S." for "the provisions of G.S. 115C-116" following "boards of education shall be governed by" in the third sentence.

Part 6A. Charter Schools.

§ 115C-238.29F. General requirements.

(a) Health and Safety Standards. — A charter school shall meet the same health and safety requirements required of a local school administrative unit. The Department of Public Instruction shall ensure that charter schools provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

(b) School Nonsectarian. — A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. —

(1) The board of directors of a charter school may sue and be sued. The State Board of Education shall adopt rules to establish reasonable amounts and types of liability insurance that the board of directors shall be required by the charter to obtain. The board of directors shall obtain at least the amount of and types of insurance required by these rules to be included in the charter. Any sovereign immunity of the

charter school, of the organization that operates the charter school, or its members, officers, or directors, or of the employees of the charter school or the organization that operates the charter school, is waived to the extent of indemnification by insurance.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school.

(d) Instructional Program. —

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the charter.

(3) A charter school shall conduct the student assessments required for charter schools by the State Board of Education.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with disabilities.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes, except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its charter.

(e) Employees. —

(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. All teachers in grades six through 12 who are teaching in the core subject areas of mathematics, science, social studies, and language arts shall be college graduates.

The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

(2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.

(3) If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at a charter school, the local school administrative unit shall grant the leave for one year. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has career status under G.S. 115C-325 prior to receiving a leave of absence to teach at a charter school may return to

a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) The employees of the charter school shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The State Board of Education provides funds to charter schools, approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools are public schools and that the employees of charter schools are public school employees. Employees of a charter school whose board of directors elects to become a participating employer under G.S. 135-5.3 are "teachers" for the purpose of membership in the North Carolina Teachers' and State Employees' Retirement System. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. —

(1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the State Board of Education for charter schools. These audit requirements may include the requirements of the School Budget and Fiscal Control Act.

(2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.

(3) The school shall report at least annually to the chartering entity and the State Board of Education the information required by the chartering entity or the State Board.

(g) Admission Requirements. —

(1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school.

(2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.

(3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.

(4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides.

(5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings

of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school. Within one year after the charter school begins operation, the population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit.

(6) During each period of enrollment, the charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, students shall be accepted by lot. Once enrolled, students are not required to reapply in subsequent enrollment periods.

(7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(h) Transportation. — The charter school may provide transportation for students enrolled at the school. The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located. The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles of the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.

(i) Assets. — Upon dissolution of the charter school or upon the nonrenewal of the charter, all net assets of the charter school purchased with public funds shall be deemed the property of the local school administrative unit in which the charter school is located.

(j) **(See Editor's Note)** Driving Eligibility Certificates. — In accordance with rules adopted by the State Board of Education, the designee of the school's board of directors shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions.

(k) The Display of the United States and North Carolina Flags and the Recitation of the Pledge of Allegiance. — A charter school shall (i) display the United States and North Carolina flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. A charter school shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 5; 1997-443, s. 8.19; 1997-456, s. 55.4; 1998-212, s. 9.14A(a); 1999-243, s. 8; 2001-462, s. 1; 2004-118, s. 3; 2004-203, s. 45(b); 2006-69, s. 3(e); 2006-137, s. 2.)

Effect of Amendments. —

Session Laws 2006-69, s. 3(e), effective July 10, 2006, substituted "disabilities" for "special needs" in subdivision (d)(4).

Session Laws 2006-137, s. 2, effective July 19, 2006, added subsection (k).

§ 115C-238.29H. State and local funds for a charter school.

(a) The State Board of Education shall allocate to each charter school:

(1) An amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with disabilities and for the allocation for children with limited English proficiency;

(2) An additional amount for each child attending the charter school who is a child with disabilities; and

(3) An additional amount for children with limited English proficiency attending the charter school, based on a formula adopted by the State Board.

In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual adjustments to the amount allocated to a charter school based on its enrollment growth in school years subsequent to the initial year of operation.

In the event a child with disabilities leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with disabilities enrolls in a charter school during the first 60 school days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with disabilities.

(a1) Funds allocated by the State Board of Education may be used to enter into operational and financing leases for real property or mobile classroom units for use as school facilities for charter schools and may be used for payments on loans made to charter schools for facilities or equipment. However, State funds shall not be used to obtain any other interest in real property or mobile classroom units. No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions. Every contract or lease into which a charter school enters shall include the previous sentence. The school also may own land and buildings it obtains through non-State sources.

(b) If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year. The amount transferred under this subsection that consists of revenue derived from supplemental taxes shall be transferred only to a charter school located in the tax district for which these taxes are levied and in which the student resides. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 7; 1998-212, s. 9.20(f); 2003-423, s. 3.1; 2006-69, s. 3(f).)

Effect of Amendments. — Session Laws 2006-69, s. 3.(f), effective July 10, 2006, substituted "disabilities" for "special needs" throughout subsection (a).

Part 9. Cooperative Innovative High School Programs.

§ 115C-238.50. Purpose.

Learn and Earn High Schools. — Session Laws 2005-276, s. 7.32(e)-(h), as added by Session Laws 2006-66, s 7.11, provides: "(e) Enrollment fees and tuition for The University of North Carolina courses in which Learn and Earn students are enrolled are allowable uses of these funds. Tuition costs may include laboratory fees assessed to all students enrolled in the course or a similar course.

"(f) Textbooks required for college courses in which Learn and Earn students are enrolled may be purchased with these funds.

"(g) Payment of fees from these funds by local school administrative units to partnering community colleges and universities are restricted to technology or course fees. Funds appropriated in this act shall not be used to support the cost of athletic or other student activity or campus fees not required by enrollment in a specific course.

"(h) The State Board of Education shall allot funds for university enrollment, tuition and fees, and textbooks on the basis of and after verification of the credit hour enrollment of Learn and Earn students in university courses. The State Board of Education shall allot funds for community college fees and textbooks on the basis of and after verification of the credit hour enrollment of Learn and Earn students in community college courses."

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Article 17.

Supporting Services.

Part 1. Transportation.

§ 115C-242. Use and operation of school buses.

Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each local school administrative unit to supervise the use of all school buses operated by such local school administrative unit so as to assure and require compliance with this section:

(1) A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the local school administrative unit. Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving

and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of this Article: Provided, that children enrolled in a Headstart program or any More at Four program may be transported on public school buses, and any additional costs associated with such contractual arrangements shall be incurred by the benefitting Head Start or More at Four program: Provided further, that children with disabilities may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported are or have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education.

(2) In the case of illness or injury requiring immediate medical attention of any pupil or employee while such pupil or employee is present at the school in which such pupil is enrolled or such employee is employed, the principal of such school may, in his discretion, permit such pupil or employee to be transported by a school bus to a doctor or hospital for medical treatment, and may, in his discretion, permit such other person as he may select to accompany such pupil.

(3) The board of education of any local school administrative unit may operate the school buses of such unit one day prior to the opening of the regular school term for the transportation of pupils and employees to and from the school to which such pupils are assigned or in which they are enrolled and such employees are employed, for the purposes of the registration of students, the organization of classes, the distribution of textbooks, and such other purposes as will, in the opinion of the superintendent of the schools of such unit, promote the efficient organization and operation of such public schools.

(4) A local board of education which elects to operate a school bus transportation system, shall not be required to provide transportation for any school employee, nor shall such board be required to provide transportation for any pupil living within one and one half miles of the school in which such pupil is enrolled.

(5) Local boards of education, under rules adopted by the State Board of Education, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with disabilites, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city or county-owned school bus shall not be taken out of the State.

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. Local boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire school year before authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

Children with disabilities may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide those children with a free appropriate public education.

(6) School buses owned by a local board of education may be used for emergency management purposes in any state of disaster or local state of emergency declared under Chapter 166A of the General Statutes. Under rules and regulations adopted by a local board of education, its school buses may be used with its permission for the purpose of testing emergency management plans; however, neither the State Board of Education nor the local board of education shall be liable for the operating cost, any compensation claims or any tort claims resulting from the test.

(7) Uses authorized by G.S. 115C-243. (1955, c. 1372, art. 21, s. 4; 1957, c. 1103; 1969, c. 47; 1973, c. 869; 1977, c. 830, ss. 2, 3; 1977, 2nd Sess., c. 1280, s. 2; 1979, c. 885; 1981, c. 423, s. 1; 1983, c. 630, s. 7; c. 768, s. 8; 1987, c. 827, s. 49; 2006-66, s. 7.18(i); 2006-69, s. 3(g).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 7.18.(i), effective July 1, 2006, rewrote the first proviso in the third sentence of subdivision (1).

Session Laws 2006-69, s. 3.(g), effective July 10, 2006, substituted "disabilities" for "special needs, such as mentally retarded children and children with physical defects" in subdivision (5); and substituted "disabilities" for "special needs" throughout the section and made a minor stylistic change.

§ 115C-243. Use of school buses by senior citizen groups.

(a) Any local board of education may enter into agreements with the governing body of any county, city, or town, or with any State agency, or any agency established or identified pursuant to Public Law 89-73, Older Americans Act of 1965, to provide for the use of school buses to provide transportation for the elderly.

(b) Each agreement entered into under this section must provide the following:

(1) That the board of education shall be reimbursed in full for the proportionate share of any and all costs, both fixed and variable, of such buses attributable to the uses of the bus pursuant to the agreement.

(2) That the board of education shall be held harmless from any and all liability by virtue of uses of the buses pursuant to the agreement.

(3) That adequate liability insurance is maintained under G.S. 115C-42 to insure the board of education, and that adequate insurance is maintained to protect the property of the board of education. The minimum limit of liability insurance shall not be less than the maximum amount of damages which may be awarded under the Tort Claims Act, G.S. 143-291. The costs of said insurance shall be paid by the agency contracting for the use of the bus, either directly or through the fee established by the agreement.

(c) Before any board of education shall enter into any agreement under this section, it must by resolution establish a policy for use of school buses by the elderly. The policy must give first priority to school uses under G.S. 115C-242 and 115C-42. The resolution must provide for a schedule of charges under this section. Such resolution, if adopted, shall be amended or readopted at least once per year to provide for adjustments to the schedule of charges or to provide for maintaining the same schedule of charges. If the price bid for the service by a private bus carrier is less than the schedule of charges adopted by the board of education, then the board of education may not enter into the agreement.

(d) No board of education shall be under any duty to sign any agreement under this section.

(e) No bus operated under the provisions of this section shall travel outside of the area consisting of the county or counties where the local board of education is located and the county or counties contiguous to that county or counties, but not outside of the State of North Carolina.

(f) **(Effective until July 1, 2007)** Before any agreement under this section may be signed, the State Board of Education shall adopt a uniform schedule of charges for the use of buses under this section. Such schedule shall include a charge by the hour and by the mile which shall cover all costs both fixed and variable, including depreciation, gasoline, fuel, labor, maintenance, and insurance. The schedule may be amended by the State Board of Education. The schedule of charges adopted by the local board of education under subsection (c) may vary from the State schedule only to cover changes in wages. Prior to taking any action under this subsection, the State Board of Education may consult with the Advisory Budget Commission.

(f) **(Effective July 1, 2007)** Before any agreement under this section may be signed, the State Board of Education shall adopt a uniform schedule of charges for the use of buses under this section. Such schedule shall include a charge by the hour and by the mile which shall cover all costs both fixed and variable, including depreciation, gasoline, fuel, labor, maintenance, and insurance. The schedule may be amended by the State Board of Education. The schedule of charges adopted by the local board of education under subsection (c) may vary from the State schedule only to cover changes in wages. (1977, 2nd Sess., c. 1280, s. 1; 1981, c. 423, s. 1; 1983, c. 717, s. 92; 1985 (Reg. Sess., 1986), c. 955, ss. 17, 18; 2006-203, s. 32.)

Subsection (f) Set Out Twice. — The first version of subsection (f) set out above is effective until July 1, 2007. The second version of subsection (f) set out above is effective July 1, 2007.

Effect of Amendments. — Session Laws 2006-203, s. 32, effective July 1, 2007, deleted the former last sentence of subsection (f), which read: "Prior to taking any action under this subsection, the State Board of Education may consult with the Advisory Budget Commission."

§ 115C-247. Purchase of activity buses by local boards.

The several local boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses.

Each local board of education that operates activity buses shall adopt a policy relative to the proper use of the vehicles. The policy shall permit the use of these buses for travel to athletic events during the regular season and playoffs and for travel to other school-sponsored activities.

The provisions of G.S. 115C-42 shall be fully applicable to the ownership and operation of such activity school buses. Activity buses may also be used as provided in G.S. 115C-243. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4; 1977, 2nd Sess., c. 1280, s. 3; 1981, c. 423, s. 1; 2006-208, s. 1.)

Editor's Note. — Session Laws 2006-208, s. 2, provides: "The Department of Public Instruction, in cooperation with the Department of Transportation, shall develop a program for issuing a statewide permit to commercial motor coach companies that seek to contract with local school systems for the transportation of students, school personnel, and other persons authorized by the school system for school-sponsored trips. This program is intended to provide commercial motor coach companies with a single permit that can be used statewide and will be an alternative to the current system that requires motor coach companies to meet the varying requirements of each school system that they contract with for such transportation services. The Department of Public Instruction shall review and amend the recommended guidelines and procedures for school charter transportation, adopted by the School Charter Transportation Safety Committee in December 2004, to meet the requirements of the new permit program.

"The requirements of the program shall include, but not be limited to, all of the following:

"(1) The motor coach company demonstrates compliance with the Federal Motor Carrier Safety Regulations (FMCSR) as evidenced by a prior on-site examination of its motor carrier operation in which the company received a safety fitness rating of "satisfactory" in accordance with 49 C.F.R. Part 385.

"(2) The previously issued "satisfactory" safety rating is current at the time the local board of education contracts for services.

"(3) The motor coach company has not had an out-of-service order issued against it within the prior 12 months.

"(4) The requirement that the motorcoach companies adhere to the motor vehicle laws of the jurisdiction in which they are operating.

"(5) The collection of a reasonable fee to offset the costs of implementing and maintaining the program.

"(6) The consideration of the needs of schools that serve large populations of students with special needs.

"The Department of Public Instruction, in establishing the program, shall consult with the North Carolina State Highway Patrol, the North Carolina School Boards Association, the Federal Motor Carrier Safety Administration, the North Carolina Motorcoach Association, the North Carolina PTA, and other interested parties to discuss the proposed requirements of the program.

"The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee by November 15, 2006, on development of the program. The Committee shall report its findings, together with any recommended legislation, including the amount of any reasonable fees, to the 2007 General Assembly upon its convening."

Effect of Amendments. — Session Laws 2006-208, s. 1, effective August 8, 2006, added the second paragraph, and designated the former second sentence of the first paragraph as the third paragraph.

§ 115C-250. Authority to expend funds for transportation of children with disabilities.

(a) The State Board of Education and local boards of education may expend public funds for transportation of children with disabilities who are unable because of their disability to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide these children with a free appropriate education under Article 9 of this Chapter. At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of children with disabilities may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules concerning the construction and equipment of these buses and minibuses.

The Departments of Health and Human Services, Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of children with disabilities who are unable because of their disability to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide these children with a free appropriate public education under Article 9 of this Chapter.

If a local area mental health center places a child with a disability in an educational program, the local area mental health center shall pay for the transportation of the child who is unable due to the disability to ride the regular school buses to the program.

(b) Funds appropriated for the transportation of children with disabilities may be used to pay transportation safety assistants employed in accordance with G.S. 115C-245(e) for buses to which children with disabilities are assigned. (1955, c. 1372, art. 21, s. 6; 1973, c. 1351, s. 1; 1975, c. 678, ss. 9, 10; 1977, c. 830, s. 1; 1979, c. 719, ss. 1-4; 1979, 2nd Sess., c. 1156; 1981, c. 423, s.

1; c. 912, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 31; 1985, c. 479, s. 26(b); 1987, c. 769; 1997-443, s. 11A.118(a); 1998-202, s. 4(n); 2000-137, s. 4(q); 2006-69, s. 3(h).)

Effect of Amendments. — Session Laws 2006-69, s. 3.(h), effective July 10, 2006, amended the catchline by substituting "disabilities" for "special needs"; in the first paragraph of subsection (a), in the first sentence, substituted "children with disabilities" for "handicapped children with special needs," substituted "these children" for "such children," and substituted "education under Article 9 of this Chapter" for "education, including its duty under G.S. 115C-115", in the second sentence, substituted "children with disabilities" for "exceptional children," and deleted "and regulations" following "shall adopt rules" in the last sentence; in the second paragraph of subsection (a), substituted "these children" for "such children," and substituted "education under Article 9 of this Chapter" for "education", in the third paragraph of subsection (a), substituted "child who is unable due to the disability" for "child, if handicapped and unable because of the handicap"; deleted "the provisions of" preceding "G.S. 115C-245(e)" in subsection (b); and throughout the section, substituted "a disability" or "disabilities" for "special needs," substituted "disability" for "handicap," and made minor stylistic changes.

SUBCHAPTER V. PERSONNEL.

Article 19.

Principals and Supervisors.

§ 115C-284. Method of selection and requirements.

(a) Principals and supervisors shall be elected by the local boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) In the city administrative units, principals shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. The State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose. If the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. The Board shall not issue provisional certificates for principals.

The Board shall issue a one-year provisional assistant principal's certificate to an employee of a local board only if: (i) the local board determines there is a shortage of persons who hold or are qualified to hold a principal's certificate and the employee enrolls in an approved program leading to a masters degree in school administration before the provisional certificate expires; or (ii) the employee is enrolled in an approved masters in school administration program and is participating in the required internship under the masters program. The Board shall extend the provisional certificate for a total of no more than two additional years while the employee is completing the program.

(c1) It is the policy of the State of North Carolina to maintain the highest quality principal and assistant principal education programs in order to enhance the competence of professional personnel certified in North Carolina. To ensure that principal and assistant principal preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education shall submit to the General Assembly not later than March 1, 1992, a plan to promote this policy. In developing this plan, the State Board shall consider (i) requiring these programs to include additional preparation for site-based decision making and for the additional autonomy being granted to local school units, (ii) enhancing program entrance requirements to include assessment of an applicant's ability to complete the program and to perform as a principal, and (iii) enhancing the overall content of the programs.

The State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors and such other public and private agencies as are necessary, shall refine the several certification requirements, standards for approval of institutions of principal and assistant principal education, standards for institution-based innovative and experimental programs, and standards for improved efficiencies in the administration of the approved programs.

(d) Repealed by Session Laws 1989, c. 385, s. 1.

(d1) It is the policy of the State of North Carolina that, subsequent to the adoption of a system of classroom teacher differentiation and prerequisites to candidacy for principal, a classroom teacher must have attained at least the second level of differentiation, have at least four years of classroom teaching experience, and possess, at least, a Masters Degree in Education Administration. This subsection shall not apply to educational personnel certified as of July 1, 1984.

(e) It shall be unlawful for any board of education to employ or keep in service any principal or supervisor who neither holds nor is qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education.

(f) The allotment of classified principals shall be one principal for each duly constituted school with seven or more state-allotted teachers.

(g) Local boards of education shall have authority to employ supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the local school administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such supervisors shall be assigned by the superintendent with the approval of the board of education.

(h) All principals and supervisors employed in the public schools of the State or in schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education. (1955, c. 1372 art. 5, ss. 4, 27; art. 6, s. 6; art. 18, ss. 1-4; 1963, c. 688, s. 3; 1965, c. 584, ss. 6, 20.1; 1969, c. 539; 1971, c. 1188, s. 1; 1973, cc. 236, 733; c. 770, ss. 1, 2; 1975, c. 437, s. 7; c. 686, s. 1; c. 731, ss. 1, 2; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 4; 1985 (Reg. Sess., 1986), c. 975, s. 16; 1989, c. 385, s. 1; 1991, c. 689, s. 200(a); 1991 (Reg. Sess., 1992), c. 1030, s. 28; 1993, c. 392, s. 2; 1999-30, s. 1; 1999-394, s. 1; 2006-264, s. 56(b).)

Effect of Amendments. — Session Laws 2006-264, s. 56, effective August 27, 2006, in subsection (c), substituted "certificate" for "certificate, other than an applicant who is qualified under Article 19A of this Chapter" in the second sentence, and deleted the former next-to-last sentence, which read: "The Board may not require an applicant who is qualified under

Article 19A of this Chapter to take an additional exam to demonstrate academic competence."

ARTICLE 19A.

Standards Board for Public School Administration.

§§ 115C-290.1 through 115C-290.9: Repealed by Session Laws 2006-264, s. 56, effective August 27, 2006.

Editor's Note. — "G.S. 115C-290.5 was also amended by Session Laws 2006-203, s. 33, effective July 1, 2007 and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, which rewrote subdivision (a)(5). The section is set out above as repealed."

§§ 115C-291 through 115C-294: Reserved for future codification purposes.

ARTICLE 20.

Teachers.

§ 115C-296. Board sets certification requirements.

Editor's Note. — Session Laws 2006-264, s. 96.5, effective August 27, 2006, provided: "If House Bill 706, 2005 Regular Session, becomes law, then Section 1 of Session Laws 2005-198 [which amended G.S. 115C-296] is repealed." House Bill 706, 2005 Regular Session, was vetoed by the Governor on September 29, 2005, and never became law.

§ 115C-296.4. North Carolina Teacher Academy Board of Trustees.

(a) The North Carolina Teacher Academy Board of Trustees shall establish a statewide network of high quality, integrated, comprehensive, collaborative, and substantial professional development for teachers, which shall be provided through summer programs. This network shall include professional development programs that focus on teaching strategies for teachers assigned to at-risk schools.

(b) Repealed by Session Laws 2006, c. 66, s. 9.17(c).

(c) The Board of Trustees shall consist of 20 members appointed as follows:

(1) The Superintendent of Public Instruction or the Superintendent's designee;

(2) One member of the State Board of Education appointed by the Chair of the State Board;

(3) , (4) Repealed by Session Laws 2006, c. 66, s. 9.17(c).

(5) One dean of a School of Education from one of the constituent institutions, appointed by the Governor;

(6) Four public school teachers appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches on grades 9 through 12;

(7) Four public school teachers appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches on grades 9 through 12;

(8) Three public school teachers appointed by the Governor;

(9) One superintendent of a local school administrative unit appointed by the Governor;

(10) Two public school principals appointed by the Governor; and

(11) The President of the North Carolina Association of Independent Colleges and Universities, or a designee.

(12) Two at-large members appointed by the Governor.

(d) Members appointed prior to September 1, 1995, shall serve until June 30, 1997, except that the terms of members appointed pursuant to subdivisions (6) and (7) of subsection (d) of this section shall expire June 30, 1995. Subsequent appointments shall be for four-year terms, except that two of the members appointed by the 1995 General Assembly pursuant to subdivision (6) of subsection (d) of this section and two of the members appointed by the 1995 General Assembly pursuant to subdivision (7) of subsection (d) of this section shall serve for two-year terms. The two new members under subdivision (c)(12) of this section shall serve initial terms beginning January 1, 2007, and ending June 30, 2010. The additional member appointed under subdivision (c)(8) of this section shall serve a term beginning January 1, 2007, and ending June 30, 2010. The designation of two deans serving under subdivision (c)(5) of this section shall expire December 31, 2006, and the Governor shall make a new appointment under that subdivision for a term beginning January 1, 2007, and ending June 30, 2010.

Members may serve two consecutive four-year terms.

Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

The Board of Trustees shall elect a new chair every two years from its membership. The chair may serve two consecutive two-year terms as chair.

(e) The chief administrative officer of the Teacher Academy shall be an executive director appointed by the Board of Trustees.

(f) Repealed by Session Laws 2006-66, s. 9.17(c).

(g) The North Carolina Teacher Academy shall report annually on or before October 1 to the Joint Legislative Education Oversight Committee its expenditures for the prior fiscal year. (1995, c. 324, s. 17.9; 2001-424, s. 28.28(a); 2006-66, s. 9.17(c), (f))

Editor's Note. — This section was formerly codified as G.S. 116-30.01. It was recodified as G.S. 115C-296.4 by Session Laws 2006-66, s. 9.17(c), effective January 1, 2007, except that the General Assembly and the Governor may make appointments prior to that date for terms to begin January 1, 2007.

Session Laws 2006-66, s. 9.17(f) was codified as subsection (g) of this section, effective July 10, 2006, at the direction of the Revisor of Statutes. Pursuant to the terms of Session Laws 2006-66, s. 9.17(f), the first report required by subsection (g) of this section shall be due no later than October 1, 2006, covering expenditures for the 2005-2006 fiscal year.

Session Laws 2006-66, 9.17(d), provides: "The North Carolina Teacher Academy and all resources, assets, liabilities, operations, and personnel are transferred and shall be located administratively under the State Board of Education but shall exercise its powers and duties independently of the State Board of Education through its own board of trustees. This transfer shall have all of the elements of a Type II transfer, as that term is defined in G.S. 143A-6(b). Where a conflict arises regarding the transfer, the conflict shall be resolved by the Governor, and the decision of the Governor shall be final."

Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.17.(c), effective July 1, 2006, repealed subsection (b); repealed subdivisions (c)(3) and (c)(4); rewrote subdivision (c)(5); substituted "Three" for "Two" in subdivision (c)(8); added subdivision (c)(12); added the last three sentences in the first paragraph of subsection (d); substituted "an executive director" for "a director" in subsection (e); and repealed subsection (f).

§ 115C-301.1. Duty-free instructional planning time.

All full-time assigned classroom teachers shall be provided duty-free instructional planning time during regular student contact hours. The duty-free instructional planning time shall be provided to the maximum extent that (i) the safety and proper supervision of children may allow during regular student contact hours and (ii) insofar as funds are provided for this purpose by the General Assembly. If the safety and supervision of children does not allow duty-free instructional planning time during regular student contact hours for a given teacher, the funds provided by the General Assembly for the duty-free instructional planning time for that teacher shall revert to the general fund. Principals shall not unfairly burden a given teacher by making that teacher give up his or her duty-free instructional planning time on an ongoing, regular basis without the consent of the teacher. (1983, c. 761, s. 88; 1999-163, s. 1; 2006-153, s. 3.)

Effect of Amendments. — Session Laws 2006-153, s. 3, effective July 1, 2006, and applicable to school improvement plans beginning with the 2007-2008 school year, substituted "Duty-free instructional planning time" for "Duty free period" in the section heading; substituted "duty-free instructional planning time" for "duty free period" throughout the section, and deleted "a daily" preceding "duty" in two places.

ARTICLE 22.

General Regulations.

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

Editor's Note. —

Session Laws 2006-66, s. 7.21(b) provides: "In accordance with G.S. 115C-325 and by way of clarification, it shall not constitute a demotion as that term is defined in G.S. 115C-325(a)(4) if:

"(1) A teacher who receives a salary supplement pursuant to subsection (a) of this section is reassigned to a school at which there is no such salary supplement;

"(2) A teacher who receives a salary supplement pursuant to subsection (a) of this section moves to a different local school administrative unit; or

"(3) A teacher receives a salary supplement pursuant to subsection (a) of this section and the salary supplement is subsequently discontinued or reduced."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

CASE NOTES

II. Probationary Teachers.
VII. Judicial Review.

II. PROBATIONARY TEACHERS.

Nonrenewals Upheld. —

In deciding not to renew a teacher's contract, a school board satisfied its duties to determine the substantive basis for the recommendation of nonrenewal and to ensure that the nonrenewal was not for a prohibited reason; the administrative record showed that the teacher's contract was not renewed because the teacher threatened to be a counterproductive force concerning faculty morale, based upon several instances of the teacher's conduct. Davis v. Macon County Bd. of Educ., — N.C. App. —, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

VII. JUDICIAL REVIEW.

Standards for Review. —

When a teacher claimed that her contract had not been renewed because of personal reasons, the trial court properly applied a whole-record standard of review; the school board's motivation in not renewing the contract was an issue of fact. Davis v. Macon County Bd. of Educ., — N.C. App. —, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

In determining whether a school board properly determined not to renew a teacher's contract under G.S. 115C-325(m)(2), the trial court had looked at all of the evidence and determined that there was substantial evidence to support the board's determination, even without inaccurate information contained in a memorandum; in doing so, it had properly applied the whole record test to the evidence presented to the board, and this justified its later denial of the teacher's motion for reconsideration. Davis v. Macon County Bd. of Educ., — N.C. App. —, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

ARTICLE 24C.

Teacher Enhancement Program.

Part 2. North Carolina Teaching Fellows Commission.

§ 115C-363.23A. Teaching Fellows Program established; administration.

(a) A Teaching Fellows Program shall be administered by the North Carolina Teaching Fellows Commission. The Teaching Fellows Program shall be used to provide a four-year scholarship loan of six thousand five hundred dollars ($6,500) per year to North Carolina high school seniors interested in preparing to teach in the public schools of the State. The Commission shall adopt very stringent standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarship loans to ensure that only the best high school seniors receive them.

(b) The Commission shall administer the program in cooperation with teacher training institutions selected by the Commission. Teaching Fellows should be exposed to a range of extra-curricular activities while in college. These activities should be geared to instilling a strong motivation not only to remain in teaching but to provide leadership for tomorrow's schools.

(c) The Commission shall form regional review committees to assist it in identifying the best high school seniors for the program. The Commission and the review committees shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in teaching to enter the program.

(d) All scholarship loans shall be evidenced by notes made payable to the Commission that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Commission.

(e) The Commission shall forgive the loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall also forgive the loan if, within seven years after graduation, the recipient teaches for three consecutive years, unless the recipient takes an approved leave of absence, at a North Carolina public school in a local school administrative unit that, at the time the recipient accepts employment with the unit, is a low-performing school system identified in accordance with Article 6A of this Chapter or is on warning status as defined by the State Board of Education. The Commission shall also forgive the loan if it finds that it is impossible for the recipient to teach for four years, within seven years after graduation, at a North Carolina public school or at a school operated by the United States government in North Carolina, because of the death or permanent disability of the recipient.

(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund shall be used for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments.

With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used by the Public School Forum, as administrator for the Teaching Fellows Program, for costs associated with administration of the Teaching Fellows Program.

(g) The State Education Assistance Authority is responsible for the collection of a loan awarded under this section if the loan repayment is outstanding for more than 30 days. (1985 (Reg. Sess., 1986), c. 1014, s. 63(a); 1989 (Reg. Sess., 1990), c. 1066, s. 101(a), (b); 1991 (Reg. Sess., 1992), c. 1030, s. 29; 1993, c. 330, s. 1; 1998-212, s. 9.19(a); 1999-237, s. 8.12; 2002-126, ss. 9.2(c), (d); 2006-66, s. 7.19(a).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 7.19(a), effective July 1, 2006, rewrote the second paragraph of subsection (f).

SUBCHAPTER VI. STUDENTS.

Article 25.

Admission and Assignment of Students.

§ 115C-366. Assignment of student to a particular school.

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents are considered legal residents of the local school administrative unit in which the institution is located. These children are eligible for admission to the public schools of the local school administrative unit as provided in this section.

(a2) It is the policy of the State that every child of a homeless individual and every homeless child and youth has access to a free, appropriate public education. The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. A local board of education shall not charge a homeless child or youth tuition for enrollment. An unaccompanied youth or a homeless child's or youth's parent, guardian, or legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the homeless child or youth, and this determination shall be binding on the local board of education, subject to judicial review.

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result of any one of the following:
  a. The death, serious illness, or incarceration of a parent or legal guardian,
  b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,
  c. Abuse or neglect by the parent or legal guardian,
  d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student,
  e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or
  f. The loss or uninhabitability of the student's home as the result of a natural disaster.
(2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative unit.
(3) The caregiver adult and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:
  a. Confirm the qualifications set out in this subsection establishing the student's residency,
  b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and
  c. Attest that the caregiver adult has been given and accepts responsibility for educational decisions for the student.

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the caregiver adult shall attest to that fact in the affidavit. If the student is a minor, the caregiver adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

Upon receipt of both affidavits or an affidavit from the caregiver adult that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment under this Article as long as the address is kept confidential from the public under Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. — A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect, and that definition also shall apply to this section.

(2) Caregiver adult. — The adult with whom the child resides. For children placed or assigned in a licensed facility, a caregiver adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.
(3) Educational decisions. — Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.
(4) Facility. — A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).
(5) Homeless. — Individuals who lack a fixed, regular, and adequate nighttime residence or are included in the definition of homeless children and youths in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.
(6) Legal custodian. — The person or agency that has been awarded legal custody of the student by a court.
(7) Licensed facility. — A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.
(8) McKinney-Vento Homeless Education Assistance Improvements Act of 2001. — 20 U.S.C. § 11431, et seq., as amended, and federal regulations adopted under this act.
(9) Program participant. — An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes.
(10) Unaccompanied youth. — Youths who are not in the physical custody of a parent or guardian as defined in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. (1955, c. 366, s. 1; c. 1372, art. 19, s. 3; 1956, Ex. Sess., c. 7, s. 1; 1971, c. 153; 1981, c. 423, s. 1; c. 567, s. 1; 1991, c. 407, s. 1; c. 719, s. 2; 1997-271, s. 1; 1997-443, s. 8.29(d); 2002-171, s. 5; 2006-65, s. 1.)

Effect of Amendments. — Session Laws 2006-65, s. 1, effective July 1, 2006, and applicable beginning with the 2006-2007 school year, rewrote the section.

§ 115C-366.1. Local boards of education; tuition charges.

Local Modification. — Cherokee County: 2006, c. 13, s. 1

§ 115C-366.2: Repealed by Session Laws 2006-65, s. 2, effective July 1, 2006.

Editor's Note. — This section was also amended by Session Laws 2006-69, s. 3(i), effective July 10, 2006, which substituted "G.S. 115C-111.3(a)" for "G.S. 115C-140.1(a)" in clause (ii) of the first sentence. The section is set out above as repealed.

§ 115C-367. Assignment on certain bases prohibited.

No person shall be refused admission to or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creeds, colors or national origins from the community.

Where local school administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts: Provided, however, that the board of education of a local school administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient.

The provisions of Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370 shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment.

The provisions of Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370 shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of a local school administrative unit. (1969, c. 1274; 1981, c. 423, s. 1; 2006-69, s. 3(j).)

Effect of Amendments. — Session Laws 2006-69, s. 3(j), effective July 10, 2006, substituted "Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370" for "G.S. 115C-366 (b), 115C-367 to 115C-370 and 115C-116" in the third and fourth paragraphs.

§ 115C-371. Assignment to special education programs.

Assignment of students to special education programs is subject to Article 9 of this Chapter. (1981, c. 423, s. 1; 2006-69, s. 3(k).)

Effect of Amendments. — Session Laws 2006-69, s. 3(k), effective July 10, 2006, substituted "Article 9 of this Chapter" for "the provisions of G.S. 115C-116."

Article 25A.

Special Medical Needs of Students.

§ 115C-375.1. To provide some medical care to students.

It is within the scope of duty of teachers, including substitute teachers, teacher assistants, student teachers, or any other public school employee when authorized by the board of education or its designee, (i) to administer any drugs or medication prescribed by a doctor upon written request of the parents, (ii) to give emergency health care when reasonably apparent circumstances indicate that any delay would seriously worsen the physical condition or endanger the life of the pupil, and (iii) to perform any other first aid or lifesaving techniques in which the employee has been trained in a program approved by the State Board of Education. No employee, however, shall be required to administer drugs or medication or attend lifesaving techniques programs.

Any public school employee, authorized by the board of education or its designee to act under (i), (ii), or (iii) above, shall not be liable in civil damages for any authorized act or for any omission relating to that act unless the act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing. Any person, serving in a voluntary position at the request of or with the permission or consent of the board of education or its designee, who has been given the authority by the board of education or its designee to act under (ii) above shall not be liable in civil damages for any authorized act or for any omission relating to the act unless the act amounts to gross negligence, wanton conduct, or intentional wrongdoing.

At the commencement of each school year, but before the beginning of classes, and thereafter as circumstances require, the principal of each school shall determine which persons will participate in the medical care program. (2005-22, s. 2(b); 2006-264, ss. 57(a), (c).)

Editor's Note. —

Session Laws 2006-264, s. 57(a), effective August 27, 2006, provides: "Article 26A of Chapter 115C of the General Statutes, as enacted by Section 1 of S.L. 2005-22, is recodified as Article 25A of Chapter 115C of the General Statutes."

§ 115C-375.2. Possession and self-administration of asthma medication by students with asthma or students subject to anaphylactic reactions, or both.

(a) Local boards of education shall adopt a policy authorizing a student with asthma or a student subject to anaphylactic reactions, or both, to possess and self-administer asthma medication on school property during the school day, at school-sponsored activities, or while in transit to or from school or school-sponsored events. As used in this section, "asthma medication" means a medicine prescribed for the treatment of asthma or anaphylactic reactions and includes a prescribed asthma inhaler or epinephrine auto-injector. The policy shall include a requirement that the student's parent or guardian provide to the school:

(1) Written authorization from the student's parent or guardian for the student to possess and self-administer asthma medication.

(2) A written statement from the student's health care practitioner verifying that the student has asthma or an allergy that could result in an anaphylactic reaction, or both, and that the health care practitioner prescribed medication for use on school property during the school day, at school-sponsored activities, or while in transit to or from school or school-sponsored events.

(3) A written statement from the student's health care practitioner who prescribed the asthma medication that the student understands, has been instructed in self-administration of the asthma medication, and has demonstrated the skill level necessary to use the asthma medication and any device that is necessary to administer the asthma medication.

(4) A written treatment plan and written emergency protocol formulated by the health care practitioner who prescribed the medicine for managing the student's asthma or anaphylaxis episodes and for medication use by the student.

(5) A statement provided by the school and signed by the student's parent or guardian acknowledging that the local school administrative unit

and its employees and agents are not liable for an injury arising from a student's possession and self-administration of asthma medication.

(6) Other requirements necessary to comply with State and federal laws.

(b) The student must demonstrate to the school nurse, or the nurse's designee, the skill level necessary to use the asthma medication and any device that is necessary to administer the medication.

(c) The student's parent or guardian shall provide to the school backup asthma medication that shall be kept at the student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(d) Information provided to the school by the student's parent or guardian shall be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(e) If a student uses asthma medication prescribed for the student in a manner other than as prescribed, a school may impose on the student disciplinary action according to the school's disciplinary policy. A school may not impose disciplinary action that limits or restricts the student's immediate access to the asthma medication.

(f) The requirement that permission granted for a student to possess and self-administer asthma medication shall be effective only for the same school and for 365 calendar days and must be renewed annually.

(g) No local board of education, nor its members, employees, designees, agents, or volunteers, shall be liable in civil damages to any party for any act authorized by this section, or for any omission relating to that act, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing. (2005-22, s. 1; 2006-264, s. 57(b).)

Effect of Amendments. — Session Laws 2006-264, s. 57(b), effective August 27, 2006, substituted "this section" for "this subsection" in subsection (g).

§ 115C-375.5. Education for pregnant and parenting students.

(a) Pregnant and parenting students shall receive the same educational instruction or its equivalent as other students. A local school administrative unit may provide programs to meet the special scheduling and curriculum needs of pregnant and parenting students. However, student participation in these programs shall be voluntary, and the instruction and curriculum must be comparable to that provided other students.

(b) Local boards of education shall adopt a policy to ensure that pregnant and parenting students are not discriminated against or excluded from school or any program, class, or extracurricular activity because they are pregnant or parenting students. The policy shall include, at a minimum, all of the following:

(1) Local school administrative units shall use, as needed, supplemental funds from the At-Risk Student Services allotment to support programs for pregnant and parenting students.

(2) Notwithstanding Part 1 of Article 26 of this Chapter, pregnant and parenting students shall be given excused absences from school for pregnancy and related conditions for the length of time the student's physician finds medically necessary. This includes absences due to the illness or medical appointment during school hours of a child of whom the student is the custodial parent.

(3) Homework and make-up work shall be made available to pregnant and parenting students to ensure that they have the opportunity to keep current with assignments and avoid losing course credit because

of their absence from school and, to the extent necessary, a homebound teacher shall be assigned. (2006-69, s. 4(a).)

Editor's Note. — Session Laws 2006-69, ss. 4, 7 made this section effective July 10, 2006, and applicable beginning with the 2006-2007 school year.

ARTICLE 27.

Discipline.

§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.

(a) Local boards of education shall adopt policies not inconsistent with the provisions of the Constitutions of the United States and North Carolina, governing the conduct of students and establishing procedures to be followed by school officials in suspending or expelling any student, or in disciplining any student if the offensive behavior could result in suspension, expulsion, or the administration of corporal punishment. Local boards of education shall include a reasonable dress code for students in these policies.

The policies that shall be adopted for the administration of corporal punishment shall include at a minimum the following conditions:

(1) Corporal punishment shall not be administered in a classroom with other children present;
(2) The student body shall be informed beforehand what general types of misconduct could result in corporal punishment;
(3) Only a teacher, substitute teacher, principal, or assistant principal may administer corporal punishment and may do so only in the presence of a principal, assistant principal, teacher, substitute teacher, teacher assistant, or student teacher, who shall be informed beforehand and in the student's presence of the reason for the punishment; and
(4) An appropriate school official shall provide the child's parent or guardian with notification that corporal punishment has been administered, and upon request, the official who administered the corporal punishment shall provide the child's parent or guardian a written explanation of the reasons and the name of the second school official who was present.

Each local board shall publish all the policies mandated by this subsection and make them available to each student and his parent or guardian at the beginning of each school year. Notwithstanding any policy adopted pursuant to this section, school personnel may use reasonable force, including corporal punishment, to control behavior or to remove a person from the scene in those situations when necessary:

(1) To quell a disturbance threatening injury to others;
(2) To obtain possession of weapons or other dangerous objects on the person, or within the control, of a student;
(3) For self-defense;
(4) For the protection of persons or property; or
(5) To maintain order on school property, in the classroom, or at a school-related activity on or off school property.

(b) The principal of a school, or his delegate, shall have authority to suspend for a period of 10 days or less any student who willfully violates policies of conduct established by the local board of education: Provided, that a student suspended pursuant to this subsection shall be provided an opportunity to take any quarterly, semester or grading period examinations missed during the suspension period.

(c) The principal of a school, with the prior approval of the superintendent, shall have the authority to suspend for periods of times in excess of 10 school days but not exceeding the time remaining in the school year, any pupil who willfully violates the policies of conduct established by the local board of education. The pupil or his parents may appeal the decision of the principal to the local board of education.

(d) Notwithstanding G.S. 115C-378, a local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older whose behavior indicates that the student's continued presence in school constitutes a clear threat to the safety of other students or employees. The local board of education's decision to expel a student under this section shall be based on clear and convincing evidence. Prior to ordering the expulsion of a student pursuant to this subsection, the local board of education shall consider whether there is an alternative program offered by the local school administrative unit that may provide education services for the student who is subject to expulsion. At any time after the first July 1 that is at least six months after the board's decision to expel a student under this subsection, a student may request the local board of education to reconsider that decision. If the student demonstrates to the satisfaction of the local board of education that the student's presence in school no longer constitutes a threat to the safety of other students or employees, the board shall readmit the student to a school in that local school administrative unit on a date the board considers appropriate.

(d1) A local board of education or superintendent shall suspend for 365 calendar days any student who:

(1) Brings onto educational property or to a school-sponsored curricular or extracurricular activity off educational property, or

(2) Possesses on educational property or at a school-sponsored curricular or extracurricular activity off educational property,

a weapon, as defined in G.S. 14-269.2(b), 14-269.2(b1), 14-269.2(g), and 14-269.2(h). The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services.

(d2)(1) The superintendent shall, upon recommendation of the principal, remove to an alternative educational setting, as provided in subdivision (4) of this subsection, any student who is at least 13 and who physically assaults and seriously injures a teacher or other school personnel. If no appropriate alternative educational setting is available, then the superintendent shall, upon recommendation of the principal, suspend for no less than 300 days but no more than 365 days any student who is at least 13 and who physically assaults and seriously injures a teacher or other school personnel.

(2) The superintendent may, upon recommendation of the principal, remove to an alternative educational setting any student who is at least 13 and who does one of the following:

a. Physically assaults a teacher or other adult who is not a student.

b. Physically assaults another student if the assault is witnessed by school personnel.

c. Physically assaults and seriously injures another student.

If no appropriate alternative educational setting is available, then the superintendent may, upon recommendation of the principal, suspend this student for up to 365 days.

(3) For purposes of this subsection, the conduct leading to suspension or removal to an alternative educational setting must occur on school property or at a school-sponsored or school-related activity on or off school property. This subsection shall not apply when the student who is subject to suspension or removal was acting in self-defense. If a teacher is assaulted or injured and as a result a student is suspended or removed to an alternative educational setting under this subsection, then the student shall not be returned to that teacher's classroom unless the teacher consents. If a student is suspended under this subsection, the board may assign the student to an alternative educational setting upon the expiration of the period of suspension.

(4) If the superintendent removes the student to an alternative educational setting, as provided in subdivision (1) of this subsection, and the conduct leading to the removal occurred on or before the ninetieth school day, the board shall remove the student to that setting for the remainder of the current school year and the first 90 school days in the following school year. If the superintendent chooses to remove the student to an alternative educational setting, as provided in subdivision (1) of this subsection, and the conduct leading to the removal occurred after the ninetieth school day, the board shall remove the student to that setting for the remainder of the current school year and for the entire subsequent school year. Notwithstanding these requirements, the superintendent may authorize a shorter or longer length of time a student must remain in an alternative educational setting if the superintendent finds this would be more appropriate based upon the recommendations of the principals of the alternative school and the school to which the student will return.

(d3) A local board of education or superintendent shall suspend for 365 calendar days any student who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device designed to destroy or damage property by explosion, blasting, or burning, or who, with intent to perpetrate a hoax, conceals, places, or displays any device, machine, instrument, or artifact on educational property or at a school-sponsored curricular or extracurricular activity off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property. The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services. For purposes of this subsection and subsection (d1) of this section, the term "educational property" has the same definition as in G.S. 14-269.2(a)(1).

(d4) A local board of education or superintendent may suspend for up to 365 days any student who:

(1) By any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device, substance, or material designed to cause harmful or life-threatening illness or injury to another person;

(2) With intent to perpetrate a hoax, conceals, places, disseminates, or displays on educational property or at a school-sponsored curricular

or extracurricular activity off educational property any device, machine, instrument, artifact, letter, package, material, or substance, so as to cause any person reasonably to believe the same to be a substance or material capable of causing harmful or life-threatening illness or injury to another person;

(3) Threatens to commit on educational property or at a school-sponsored curricular or extracurricular activity off educational property an act of terror that is likely to cause serious injury or death, when that threat is intended to cause a significant disruption to the instructional day or a school-sponsored activity or causes that disruption;

(4) Makes a report, knowing or having reason to know the report is false, that there is about to occur or is occurring on educational property or at a school-sponsored curricular or extracurricular activity off educational property an act of terror that is likely to cause serious injury or death, when that report is intended to cause a significant disruption to the instructional day or a school-sponsored activity or causes that disruption; or

(5) Conspires to commit any of the acts described in this subsection.

(d5) When a student is expelled or suspended for more than 10 days, the local board shall give notice to the student's parent or guardian of the student's rights under this section. If English is the second language of the parent or guardian, the notice shall be written in the parent or guardian's first language when the appropriate foreign language resources are readily available and in English, and both versions shall be in plain language and shall be easily understandable.

(e) A decision of a superintendent under subsection (c), (d1), (d2), (d3), or (d4) of this section may be appealed to the local board of education. A decision of the local board upon this appeal or of the local board under subsection (d) or (d1) of this section is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision.

(f) Local boards of education shall ensure they have clear policies governing the conduct of students. At a minimum, these policies shall state the consequences of violent or assaultive behavior, possessions of weapons, and criminal acts committed on school property or at school-sponsored functions. These policies shall provide that when notice is given to students or parents of a suspension of more than 10 days or expulsion, this notice shall identify what information will be included in the student's official record and the procedure for expungement of this information under G.S. 115C-402. The State Board shall develop guidelines to assist local boards in this process.

(g) Notwithstanding the provisions of this section, the policies and procedures for the discipline of students with disabilities shall be consistent with Article 9 of this Chapter and with federal laws and regulations.

(h) Notwithstanding any other law, no officer or employee of the State Board of Education or of a local board of education shall be civilly liable for using reasonable force, including corporal punishment, in conformity with State law, State or local rules, or State or local policies regarding the control, discipline, suspension, and expulsion of students. Furthermore, the burden of proof is on the claimant to show that the amount of force used was not reasonable. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14; 1971, c. 1158; 1979, c. 874, s. 1; 1981, c. 423, s. 1; 1987, c. 572, ss. 1, 2; c. 827, s. 52; 1989, c. 585, s. 7; 1993, c. 509, s. 4; 1995, c. 293, ss. 1, 2; c. 386, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 21; 1997-443, s. 8.29(q)(1); 1998-220, ss. 7-9; 1999-257, ss. 6-8; 1999-387, ss. 1-3; 2001-195, s. 2; 2001-244, s. 1; 2001-363, s. 2(c); 2001-487, s. 75; 2001-500, ss. 4, 5, 6.1; 2006-69, s. 3(*l*).)

Effect of Amendments. — Session Laws 2006-69, s. 3(*l*), effective July 10, 2006, added "under Article 9 of this Chapter" following "procedures established" in subsections (d1) and (d3); and inserted "Article 9 of this Chapter and with" preceding "federal laws and regulations" in subsection (g).

CASE NOTES

Due Process Requirements for Prolonged Suspension. —

Due process rights of a student were not violated by a 15-day suspension where the record showed that the student was given notice of the charges, an opportunity to be heard, and an opportunity to examine and cross-examine witnesses. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Lack of Jurisdiction Over Short-Term Suspensions. —

Trial court lacks subject matter jurisdiction to review a two-day suspension imposed on a student because neither G.S. 115C-391 nor G.S. 115C-45 allows an appeal of such to a superior court. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Equal Protection Argument Failed. — Even though a student failed to preserve an equal protection challenge to a suspension by failing to assign error or present authority, the argument was meritless at any rate under arbitrary and capricious review because there was a gender-neutral reason for a longer suspension; prior incidents of "shanking" at a high school did not result in the exposure of buttocks or genitalia. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Substantial evidence supported school board's decision to suspend a student for disruptive behavior, hazing, and disorderly conduct where the student pulled a classmate's pants down in front of other people, exposing her buttocks; the principal testified that having the student present while others talked about the incident could have created a disruption to the learning environment. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

§ 115C-391.1. Permissible use of seclusion and restraint.

(a) It is the policy of the State of North Carolina to:

(1) Promote safety and prevent harm to all students, staff, and visitors in the public schools.

(2) Treat all public school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by law.

(3) Provide school staff with clear guidelines about what constitutes use of reasonable force permissible in North Carolina public schools.

(4) Improve student achievement, attendance, promotion, and graduation rates by employing positive behavioral interventions to address student behavior in a positive and safe manner.

(5) Promote retention of valuable teachers and other school personnel by providing appropriate training in prescribed procedures, which address student behavior in a positive and safe manner.

(b) The following definitions apply in this section:

(1) "Assistive technology device" means any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capacities of a child with a disability.

(2) "Aversive procedure" means a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following:

a. Significant physical harm, such as tissue damage, physical illness, or death.

b. Serious, foreseeable long-term psychological impairment.

c. Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice, for example: electric shock applied to the body; extremely loud auditory stimuli; forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting, or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of meals; eating one's own vomit; or denial of reasonable access to toileting facilities.

(3) "Behavioral intervention" means the implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others.

(4) "IEP" means a student's Individualized Education Plan.

(5) "Isolation" means a behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving.

(6) "Law enforcement officer" means a sworn law enforcement officer with the power to arrest.

(7) "Mechanical restraint" means the use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove.

(8) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a student's body.

(9) "School personnel" means:
  a. Employees of a local board of education.
  b. Any person working on school grounds or at a school function under a contract or written agreement with the public school system to provide educational or related services to students.
  c. Any person working on school grounds or at a school function for another agency providing educational or related services to students.

(10) "Seclusion" means the confinement of a student alone in an enclosed space from which the student is:
  a. Physically prevented from leaving by locking hardware or other means.
  b. Not capable of leaving due to physical or intellectual incapacity.

(11) "Time-out" means a behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting.

(c) Physical Restraint:

(1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:
  a. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
  b. As reasonably needed to maintain order or prevent or break up a fight.
  c. As reasonably needed for self-defense.
  d. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior.
  e. As reasonably needed to escort a student safely from one area to another.
  f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.
  g. As reasonably needed to prevent imminent destruction to school or another person's property.

(2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.

(3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

(d) Mechanical Restraint:

(1) Mechanical restraint of students by school personnel is permissible only in the following circumstances:

a. When properly used as an assistive technology device included in the student's IEP or Section 504 plan or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider.

b. When using seat belts or other safety restraints to secure students during transportation.

c. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.

d. As reasonably needed for self-defense.

e. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

(2) Except as set forth in subdivision (1) of this subsection, mechanical restraint, including the tying, taping, or strapping down of a student, shall not be considered a reasonable use of force, and its use is prohibited.

(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties.

(e) Seclusion:

(1) Seclusion of students by school personnel may be used in the following circumstances:

a. As reasonably needed to respond to a person in control of a weapon or other dangerous object.

b. As reasonably needed to maintain order or prevent or break up a fight.

c. As reasonably needed for self-defense.

d. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property.

e. When used as specified in the student's IEP, Section 504 plan, or behavior intervention plan; and

1. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times.

2. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in the student's IEP or Section 504 plan.

3. The space in which the student is confined has been approved for such use by the local education agency.

4. The space is appropriately lighted.

5. The space is appropriately ventilated and heated or cooled.

6. The space is free of objects that unreasonably expose the student or others to harm.

(2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.

(3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

(f) Isolation. — Isolation is permitted as a behavior management technique provided that:

(1) The space used for isolation is appropriately lighted, ventilated, and heated or cooled.

(2) The duration of the isolation is reasonable in light of the purpose of the isolation.

(3) The student is reasonably monitored while in isolation.

(4) The isolation space is free of objects that unreasonably expose the student or others to harm.

(g) Time-Out. — Nothing in this section is intended to prohibit or regulate the use of time-out as defined in this section.

(h) Aversive Procedures. — The use of aversive procedures as defined in this section is prohibited in public schools.

(i) Nothing in this section modifies the rights of school personnel to use reasonable force as permitted under G.S. 115C-390 or modifies the rules and procedures governing discipline under G.S. 115C-391(a).

(j) Notice, Reporting, and Documentation.

(1) Notice of procedures. — Each local board of education shall provide copies of this section and all local board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.

(2) Notice of specified incidents:

a. School personnel shall promptly notify the principal or principal's designee of:

1. Any use of aversive procedures.
2. Any prohibited use of mechanical restraint.
3. Any use of physical restraint resulting in observable physical injury to a student.
4. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan.

b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.

(3) As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday.

(4) The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time, but in no event later than 30 days after the incident. The written incident report shall include:

a. The date, time of day, location, duration, and description of the incident and interventions.

b. The events or events that led up to the incident.

c. The nature and extent of any injury to the student.

d. The name of a school employee the parent or guardian can contact regarding the incident.

(5) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another

employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.

(k) Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense. (2005-205, s. 2; 2006-264, s. 58.)

Effect of Amendments. — Session Laws 2006-264, s. 58, effective August 27, 2006, made a minor punctuation change in subdivision (d)(3).

ARTICLE 27A.

Management and Placement of Disruptive Students.

§ 115C-397.1. Management and placement of disruptive students.

If, after a teacher has requested assistance from the principal two or more times due to a student's disruptive behavior, the teacher finds that the student's disruptive behavior continues to interfere with the academic achievement of that student or other students in the class, then the teacher may refer the matter to a school-based committee. The teacher may request that additional classroom teachers participate in the committee's proceedings. For the purposes of this section, the committee shall notify the student's parent, guardian, or legal custodian and shall encourage that person's participation in the proceedings of the committee concerning the student. Nothing in this section requires a student to be screened, evaluated, or identified as a child with a disability under Article 9 of this Chapter. The committee shall review the matter and shall take one or more of the following actions: (i) advise the teacher on managing the student's behavior more effectively, (ii) recommend to the principal the transfer of the student to another class within the school, (iii) recommend to the principal a multidisciplinary evaluation of the student, (iv) recommend to the principal that the student be assigned to an alternative learning program, or (v) recommend to the principal that the student receive any additional services that the school or the school unit has the resources to provide for the student. If the principal does not follow the recommendation of the committee, the principal shall provide a written explanation to the committee, the teacher who referred the matter to the committee, and the superintendent, of any actions taken to resolve the matter and of the reason the principal did not follow the recommendation of the committee.

This section shall be in addition to the supplemental to disciplinary action taken in accordance with any other law. The recommendation of the committee is final and shall not be appealed under G.S. 115C-45(c). Nothing in this section shall authorize a student to refer a disciplinary matter to this committee or to have the matter of the student's behavior referred to this committee before any discipline is imposed on the student. (1997-443, s. 8.29(b); 2006-69, s. 3(m).)

Effect of Amendments. — Session Laws 2006-69, s. 3.(m), effective July 10, 2006, in the first paragraph, deleted the former fourth sentence, which read: "A student is not required to be screened, evaluated, or identified as a child with special needs under this section," added the present fourth sentence beginning "Nothing in this section requires a student to be screened..." and ending "Article 9 of this Chapter"; and deleted "diagnosis and" preceding "evaluation of the student" in the last sentence of the first paragraph.

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 30.

Financial Powers of the State Board of Education.

§ 115C-408. Funds under control of the State Board of Education.

CASE NOTES

Duty to Provide School Facilities Is that of Counties. — G.S. 153A-102 did not authorize a county to impose a "school impact fee" upon new residential construction; its plain language limited the power to fix only those fees charged by county officers and employees for performing services or duties permitted or required by law, and under G.S. 115C-408(b), it was the duty of a county itself, not its officers or employees, to provide adequate school facilities. Furthermore, the statute's textual limitations on the power to charge fees indicated that the services were routine, document-oriented tasks. Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

Cited in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

ARTICLE 31.

The School Budget and Fiscal Control Act.

Part 1. General Provisions.

§ 115C-423. Definitions.

The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(1) "Budget" is a plan proposed by a board of education for raising and spending money for specified school programs, functions, activities, or objectives during a fiscal year.

(2) "Budget resolution" is a resolution adopted by a board of education that appropriates revenues for specified school programs, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed and a budget resolution is adopted.

(4) "Fiscal year" is the annual period for the compilation of fiscal operations. The fiscal year begins on July 1 and ends on June 30.

(5) "Fund" is an independent fiscal and accounting entity consisting of cash and other resources together with all related liabilities, obligations, reserves, and equities which are segregated by appropriate accounting techniques for the purpose of carrying on specific activities or attaining certain objectives in accordance with established legal regulations, restrictions or limitations.

(6) **(Effective until July 1, 2007)** "Vending facilities" has the same meaning as it does in G.S. 143-12.1.

(6) **(Effective July 1, 2007)** "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regard-

G.S. 115C-423(6) is set out twice. See note.

less of the means of payment, whether by coin, currency, tokens, or other means. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 167; 2006-203, s. 34.)

Subdivision (6) Set Out Twice. — The first version of subdivision (6) set out above is effective until July 1, 2007. The second version of subdivision (6) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 34, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, rewrote subdivision (6).

Part 2. Budget.

§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.

CASE NOTES

Cited in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

Part 3. Fiscal Control.

§ 115C-437. Allocation of revenues to the local school administrative unit by the county.

CASE NOTES

Use of Penal Fines. —

County board of education was entitled to funds derived from a city's red light camera program, which program was implemented by an ordinance pursuant to G.S. 160A-300.1(c), as N.C. Const. art. IX, § 7 applied to the civil penalties assessed by the city for violations of the ordinance regarding the failure to stop for a red stoplight. Further, pursuant to G.S. 115C-437, the city was to pay 90 percent of the amount collected by its red light camera program to the board. Shavitz v. City of High Point, — N.C. App. —, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006).

Article 31A.

Civil Penalty and Forfeiture Fund.

§ 115C-457.2. Remittance of moneys to the Fund.

The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed twenty percent (20%) of the amount collected. The collection cost percentage to be used by a State agency shall be established and approved by the Office of State Budget and Management on an annual basis based upon the computation of actual collection costs by each agency for the prior fiscal year. (1997-443, s. 8.20; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-423, s. 3; 2005-276, s. 6.37(v); 2006-66, s. 6.9(c).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-189, s. 2, provides: "The Legislative Research Commission may study the impact of the various decisions of the North Carolina courts on the definition of clear proceeds as it relates to the funding and operation of traffic control photographic systems by cities and towns in the State. The Commission may recommend to the General Assembly statutory changes that define clear proceeds in a manner that allows their use for the continued operation of these traffic control systems.

Effect of Amendments. —

Session Laws 2006-66, s. 1, effective July 1, 2006, added the last sentence.

CASE NOTES

Penalties for Failure to Comply With Statutory or Regulatory Tax Provisions. — Monetary payments for a taxpayer's noncompliance with a mandate of Chapter 105 are penalties and, therefore, subject to N.C. Const., art. IX, § 7; thus, monies collected by the North Carolina Department of Revenue for late filings, underpayments, and for failing to comply with statutory or regulatory tax provisions are payable to public schools. N.C. Sch. Bds. Ass'n v. Moore, 359 N.C. 474, 614 S.E.2d 504, 2005 N.C. LEXIS 694 (2005).

§ 115C-457.3. Appropriation of moneys in the Fund.

CASE NOTES

Civil penalties paid by public school systems to state agencies must be remitted to the Civil Penalty Fund for return to all of the public schools in the manner dictated by G.S. 115C-457.3. N.C. Sch. Bds. Ass'n v. Moore, 359 N.C. 474, 614 S.E.2d 504, 2005 N.C. LEXIS 694 (2005).

ARTICLE 35A.

College Scholarships.

§ 115C-499.1. Definitions.

The following definitions apply to this Article:

(1) Academic year. — A period of time in which a student is expected to complete the equivalent of at least two semesters' or three quarters' academic work.

(2) Authority. — The State Education Assistance Authority created by Article 23 of Chapter 116 of the General Statutes.

(3) Eligible postsecondary institution. — A school that is:

  a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4);

  b. A community college as defined in G.S. 115D-2(2);

c. A nonprofit postsecondary institution as defined in G.S. 116-22(1) or G.S. 116-43.5(a)(1); or

d. A postsecondary institution owned or operated by a hospital authority as defined in G.S. 131E-16(14) or school of nursing affiliated with a nonprofit postsecondary institution as defined in G.S. 116-22(1).

(4) Matriculated status. — Being recognized as a student in a defined program of study leading to a degree, diploma, or certificate at an eligible postsecondary institution.

(5) Scholarship. — A scholarship for education awarded under this Article.

(6) Title IV. — Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070, et seq. (2005-344, s. 2; 2006-66, s. 9.19; 2006-221, s. 5B; 2006-259, s. 8(h).)

Effect of Amendments. — Session Laws 2006-66, s. 9.19, as added by Session Laws 2006-221, s. 5B, effective July 1, 2006, substituted "nonprofit" for "nonpublic" in sub-subdivision (3)c.; added sub-subdivision (3)d.; and made minor stylistic and punctuation changes.

Session Laws 2006-259, s. 8.(h), effective August 24, 2006, substituted "G.S. 116-43.5(a)(1)" for "116-43.5(a)(1)" at the end of subdivision (3)c.

§ 115C-499.3. Scholarship amounts; amounts dependent on net income available.

(a) Subject to the amount of net income available under G.S. 18C-164(b)(2), a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs.

(b) Subject to the maximum amounts provided in this section, the Authority shall have the power to determine the actual scholarship amounts disbursed to students in any given year based on the amount of net income available under Chapter 18C of the General Statutes. If the net income available is not sufficient to fully fund the scholarships to the maximum amount, all scholarships shall be reduced equally, to the extent practicable, so that every eligible applicant shall receive a proportionate scholarship amount.

(c) The minimum award of a scholarship under this Article shall be one hundred dollars ($100.00). (2005-344, s. 2; 2005-276, s. 31.1(v); 2006-226, s. 22.)

Effect of Amendments. —
Session Laws 2006-226, s. 22, effective August 10, 2006, inserted "under" preceding "G.S. 18C-164(b)(2)" in subsection (a).

§ 115C-499.4. Scholarship administration; reporting requirements.

(a) The scholarships provided for in this Article shall be administered by the Authority under rules adopted by the Authority in accordance with the provisions of this Article.

(b) The Authority shall report no later than June 1, 2008, and annually thereafter to the Joint Legislative Education Oversight Committee. The report shall contain, for the previous academic year, the amount of scholarship and grant money disbursed, the number of students eligible for the funds, the number of eligible students receiving the funds, and a breakdown of the eligible postsecondary institutions that received the funds.

(c) The Authority may use up to one and one-half percent (1.5%) of the funds transferred in accordance with Chapter 18C of the General Statutes for administrative purposes.

(d) Scholarship funds unexpended shall remain available for future scholarships to be awarded under this Article.

(e) The State Education Assistance Authority shall report annually to the Joint Legislative Commission on Governmental Operations regarding the use of the funds allocated to the Authority under S.L. 2005-344. (2005-344, s. 2; 2005-276, s. 31.1(v1); 2006-259, s. 8(k); 2006-264, s. 91(d).)

Editor's Note. —

Session Laws 2006-259, s. 8(k) has been codified as subsection (e) of this section, effective August 23, 2006, at the direction of the Revisor of Statutes.

Session Laws 2006-264, s. 91(d), effective August 27, 2006, which contained similar provisions to those in Session Laws 2006-259, s. 8(k), was repealed pursuant to the terms of Session Laws 2006-264, s. 91(e), upon Session Laws 2006-259 becoming law.

SUBCHAPTER VIII. LOCAL TAX ELECTIONS.

ARTICLE 36.

Voted Tax Supplements for School Purposes.

§ 115C-511. Levy and collection of taxes.

CASE NOTES

Cited in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

SUBCHAPTER IX. PROPERTY.

ARTICLE 37.

School Sites and Property.

§ 115C-517. Acquisition of sites.

Local School Construction Financing Study Commission. — Session Laws 2004-124, ss. 7.32(a)-(j), as amended by Session Laws 2006-248, ss. 41.1, 41.2, and Session Laws 2004-161, ss. 11.1 through 11.10, provide for the establishment of a Local School Construction Financing Study Commission to examine the present system of local financing for school facilities and study alternative options for financing local school construction, renovation, repair, and maintenance. The Commission shall make a final report to the 2007 General Assembly. The final report shall contain recommendations for legislation to implement recommendations made by the Commission. The Commission shall terminate upon the filing of its final report.

Session Laws 2006-248, s. 1, provides: "This act shall be known as "The Studies Act of 2006."

§ 115C-518. Disposition of school property; easements and rights-of-way.

Local Modification. — Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 3; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 3; Brunswick: 1993 (Reg. Sess., 1994), c. 612, s. 3; Cabarrus: 1991 (Reg.

Sess., 1992), c. 848, ss. 2, 3; Carteret: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 3; Cleveland: 1995, c. 201, s. 1; Duplin: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Durham Public Schools: 1997-64; Forsyth: 1993 (Reg. Sess., 1994, c. 642, s. 3; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Haywood: 1993 (Reg. Sess., 1994), c. 611, s. 2; Hyde: 1981, c. 877; Iredell: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Macon: 1993 (Reg. Sess., 1994), c. 611, s. 2; Nash: 1993 (Reg. Sess., 1994), c. 624, s. 3; Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3; Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 3; Richmond: 1991 (Reg. Sess., 1992), c. 898; Rowan: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Sampson: 1993 (Reg. Sess., 1994), c. 614, s. 4; Stanly: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Asheville-Buncombe Technical Community College: 2000-99, s. 1; Bertie County Board of Education: 2006-61, ss. 1, 2; Bladen County Board of Education: 1991 (Reg. Sess., 1992), c. 853; 2003-122, ss. 1, 2 (as to subsection (a)); 2006-132, s. 1 (Natmore School property); city of Burlington Board of Education: 1993, c. 277, s. 3; Carteret County Board of Education: 2002-35, s. 1 (as to lease of property to Boys and Girls Club); Dare County Board of Education: 2004-16 (as to lease of property to construct and provide up to three affordable rental housing projects with priority for teachers); Davie County Board of Education: 1985, c. 18; county of Duplin, town of Kenansville, and Duplin County Board of Education: 1987, c. 50; Graham County Board of Education: 1995, c. 154, s. 2; Hertford County Board of Education: 1985, c. 123, s. 2; 2006-86, ss. 1-3 (as to construction, provision or maintenance of affordable rental housing on property owned or leased by Hertford County Board of Education and rent of housing units owned by the Board with priority for teachers); Iredell-Statesville Schools: 2006, c. 45, ss. 1, 1.1; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917; Pender County Board of Education: 1996, Second Ex. Sess., c. 16, s. 1; Transylvania County Board of Education: 1983, c. 579; Albemarle City School Administrative Unit: 1985, c. 74.

§ 115C-531. (Repealed effective July 1, 2011) Capital leases of school buildings and school facilities.

(a) Definitions. — The following definitions apply in this section:

(1) Capital lease. — A capital lease as defined by generally accepted accounting principles, regardless of how the parties describe the agreement.

(2) Private developer. — The entity with which the school board enters into a capital lease or build-to-suit lease under the provisions of this section.

(b) Authorization. — Local boards of education may enter into capital leases of real or personal property for use as school buildings or school facilities. The capital lease may relate to an existing building or a new school building to be constructed. The term of any capital lease, including any renewal periods, shall not exceed 40 years from the expected date that the local board of education will take occupancy of the property that is the subject of a capital lease. Subdivisions (c) and (d) of G.S. 115C-521 do not apply to a capital lease entered into under this section.

(c) Construction, Repairs, and Renovation. — The provisions of G.S. 115C-530(b) apply to a capital lease under this section. A capital lease entered into under this section may provide that the private developer is responsible for providing, or contracting for, construction, repair, or renovation work. Construction, repair, or renovation work undertaken or contracted by a private developer is not subject to the requirements of Article 8 of Chapter 143 of the General Statutes. Construction, repair, or renovation work undertaken or contracted by the private developer involving the estimated expenditure of three hundred thousand dollars ($300,000) or more is subject to the provisions of G.S. 115C-532.

(d) Nonsubstitution Clause. — A capital lease may not contain a nonsubstitution clause that restricts the right of a local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by the capital lease.

(e) No Deficiency Judgment; No Pledge of Taxing Power. — No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. A capital lease shall state that it does not constitute a pledge of the taxing power or full faith and credit of the local board of education or board of county commissioners.

(f) Budgetary Accounting. — A capital lease entered into under this section shall be considered a continuing contract for capital outlay and is subject to G.S. 115C-441(c1); provided, however, notwithstanding any provision of G.S. 115C-441(c1) or G.S. 115C-426, in each fiscal year the appropriation of funds by the county for the payment of amounts due under the capital lease shall be at the discretion of the board of county commissioners.

(g) Local Government Commission Approval. — Capital leases entered into under this section are subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five-hundred-thousand-dollar ($500,000) threshold applies.

(h) No Agreements on Student Assignment. — A capital lease may not contain any provision with respect to the assignment of specific students or students from a specific area to any specific school.

(i) Lien Laws Not Affected. — All laws relating to liens on private property apply to private property interests in a capital lease project undertaken under this section. (2006-232, s. 1; 2006-259, s. 54(a).)

Editor's Note. — Session Laws 2006-232, s. 3, makes this section effective August 12, 2006, and repealed effective July 1, 2011.

Effect of Amendments. — Session Laws 2006-259, s. 54(a), effective August 23, 2006, rewrote subsection (i).

§ 115C-532. (Repealed effective July 1, 2011) Additional provisions applicable to build-to-suit capital leases.

(a) Definitions. — The definitions of G.S. 115C-531 apply in this section. In addition, for the purposes of this section, the following definitions apply:

(1) Build-to-suit capital lease. — A capital lease that provides for the construction of new facilities or the renovation of existing facilities by the private developer, the cost of which is estimated to be greater than three hundred thousand dollars ($300,000).

(2) Prime contractor. — A contractor who contracts directly with the private developer or the private developer's construction manager at risk, if any, for construction, repair, or renovation work under this section.

(b) Contract Provisions. — A build-to-suit capital lease may include contractual provisions by the private developer regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease. A local board of education may also enter into a separate agreement or series of related agreements regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease; provided all agreements are approved by the board of county commissioners in connection with the approval of the build-to-suit capital lease.

(c) Approval by Local Board of Education. — Before entering into a build-to-suit capital lease pursuant to this section, the local board of education shall adopt a resolution as provided in this subsection. Before adopting the resolution required by this subsection, the local board of education shall publish a notice of its intent to enter into a build-to-suit capital lease at least 10 days in advance of the date of the meeting at which the action is contemplated and in a newspaper having general circulation within the geographic area served by the local board of education. The notice shall include, at a minimum, the date, time, and place of the meeting, a description in brief and general terms of the subject of the lease, the name of the other party to the lease, and an indication of the board's intent to take action to authorize the lease at the indicated meeting. The resolution shall provide the following:

(1) That entering into the build-to-suit capital lease for one or more specified buildings or facilities is in the unit's best interests under all the circumstances. In making this evaluation, the local board of education may consider the time, cost, and quality of design, engineering, and construction, including the time required to begin and the time required to complete a particular activity; occupancy costs, including lease payments, life-cycle maintenance, repair, and energy costs; and any other factors the board deems relevant.

(2) That the private developer is qualified to provide, either alone or in conjunction with other identified and associated persons, the products and services called for under the proposed capital lease and any related agreements. The local board of education shall make this determination taking into account any factors the local board deems relevant, including the knowledge, skill, and reputation of the provider and its associated persons, the goals and plans of providers for utilization of minority business enterprises, and the costs to be incurred by the local board of education.

(d) Additional Requirements Regarding Design Services. — All architectural, engineering, and survey services shall be procured in accordance with the provisions of Article 3D of Chapter 143 of the General Statutes. Required design and engineering services shall be performed by an engineer or a licensed architect, to the extent permitted under G.S. 83A-13(b). Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a). All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section.

(e) Additional Requirements Regarding Construction Services. — A private developer is required to seek competition and minority business participation in connection with all construction work under this section in accordance with the following provisions:

(1) A private developer shall either (i) solicit bids from prime contractors for all construction work under this section or (ii) select a construction manager at risk through a qualification based process in which case the selected construction manager at risk shall solicit bids from all of its prime contractors for all construction work under this section.

(2) The private developer or its construction manager at risk may prequalify contractors. The prequalification criteria, if any, shall be determined by the local board of education and the private developer to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the private developer and the local board of education.

(3) A private developer and its construction manager at risk, if any, shall comply with the requirements applicable to a public entity pursuant

to G.S. 143-128.2, and prime contractors shall comply with the provisions of G.S. 143-128.2 applicable to contractors, except the private developer and its construction manager shall adopt the local board of education's minority participation goal. The local board of education shall require the private developer to submit its plan for compliance with G.S. 143-128.2 for approval by the local board of education prior to the private developer soliciting bids under this subsection.

(4) A private developer or its construction manager at risk shall publicly advertise at least 30 days in advance of the bid date in a newspaper having general circulation within the geographic areas served by the local board of education, shall open bids publicly, and shall award each contract to the lowest responsible, responsive, and prequalified bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the private developer and the local board of education and included in the bid solicitation. A private developer or its construction manager at risk shall enter into the construction contracts directly with the successful bidder. After the award of a contract or contracts, the private developer or its construction manager at risk and any contractor may negotiate and reach agreement with the successful bidder on modifications to all aspects of the contract, including the time for performance, the scope of the work, and the price to be paid.

(5) The local board of education, in its discretion, may require the private developer to provide a performance and payment bond for construction work in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes and may require the private developer to provide a bond or other appropriate guarantee to cover any other guarantees, products, or services to be provided by the private developer.

(f) Predevelopment Agreements with Private Developer Authorized. — Local boards of education may enter into predevelopment agreements with a private developer in advance of entering into a build-to-suit capital lease. Predevelopment agreements with private developers shall be approved by the board of county commissioners. Predevelopment agreements may include provisions for each of the following:

(1) Site selection, land acquisition, and site preparation, including such services as wetlands delineation, archaeological review, and State and local government land-use permitting.

(2) Building programming and design, including both architectural and engineering services pursuant to subsection (d) of this section.

(g) Real Estate Transfer Authorized. — Notwithstanding any contrary provisions of law, a city, county, or local board of education may, pursuant to the procedures in G.S. 160A-267, sell, lease, or otherwise transfer real or personal property to any private developer for construction, repair, or renovation of a school facility under a build-to-suit capital lease entered into pursuant to this section. The conveying unit may subject the property to any covenants, conditions, or restrictions as the unit deems to be necessary to carry out the purposes of this section. The disposition of property pursuant to this subsection is not subject to the requirements of G.S. 115C-518. No transfer by a local board of education under this subsection shall occur unless it is approved by the board of county commissioners.

(h) Additional Permitted Lease Terms. — In recognition of the potential economic and technical utility of build-to-suit capital leases, which include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time, and the potential desirability of a single point of responsibility for these matters in connection with build-to-suit capital leases, any build-to-suit capital lease may include provisions imposing responsibility on the private developer or any identified affiliated entity for any of the following matters:

(1) Site selection, land acquisition, and site preparation, including wetlands delineation, archaeological review, and State and local government land-use permitting.
(2) Facility programming, planning, and design, including both architectural and engineering services.
(3) Qualification and prequalification of contractors and subcontractors.
(4) Construction and construction management.
(5) Financing.
(6) Facility maintenance and repairs.
(7) Energy usage guarantees.
(8) Transfer of ownership of the leased property to a local government entity at the end of the lease term.
(9) Any other guaranties, products, and services as the local board of education may determine.

(i) Letter of Credit. — A private developer shall provide an irrevocable letter of credit for the benefit of laborers and materialmen in an amount not less than five percent (5%) of the total cost of the improvements which are the subject of the build-to-suit capital lease and shall maintain the letter of credit throughout the construction of the project and for the succeeding six-month period. (2006-232, s. 1; 2006-259, s. 54(b).)

Editor's Note. — Session Laws 2006-232, s. 3, makes this section effective August 12, 2006 and repealed effective July 1, 2011.

Effect of Amendments. — Session Laws 2006-259, s. 54(b), in subsection (d), added the first sentence, and in the second sentence, substituted "an engineer or a licensed architect, to the extent permitted under G.S. 83A-13(b)" for "an engineer, to the extent permitted under G.S. 83A-13(b), or a licensed architect."

ARTICLE 38A.

Public School Building Capital Fund.

§ 115C-546.1. Creation of Fund; administration.

Local School Construction Financing Study Commission. — Session Laws 2004-124, ss. 7.32(a)-(j), as amended by Session Laws 2006-248, ss. 41.1, 41.2, and Session Laws 2004-161, ss. 11.1 through 11.10, provide for the establishment of a Local School Construction Financing Study Commission to examine the present system of local financing for school facilities and study alternative options for financing local school construction, renovation, repair, and maintenance. The Commission shall make a final report to the 2007 General Assembly. The final report shall contain recommendations for legislation to implement recommendations made by the Commission. The Commission shall terminate upon the filing of its final report.

Session Laws 2006-248, s. 1, provides: "This act shall be known as 'The Studies Act of 2006.'"

§ 115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements.

(a) Monies in the Fund shall be allocated to the counties on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education. Interest earned on funds allocated to each county shall be allocated to that county.

(b) Counties shall use monies in the Fund for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings and for the purchase of land for public school buildings; for equipment to implement a local school technology plan that is approved pursuant to G.S. 115C-102.6C; or for both. Monies used to implement a local school technology plan shall be transferred to the State School Technology Fund and allocated by that Fund to the local school administrative unit for equipment.

As used in this section, "public school buildings" only includes facilities for individual schools that are used for instructional and related purposes and does not include centralized administration, maintenance, or other facilities.

In the event a county finds that it does not need all or part of the funds allocated to it for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings, for the purchase of land for public school buildings, or for equipment to implement a local school technology plan, the unneeded funds allocated to that county may be used to retire any indebtedness incurred by the county for public school facilities.

In the event a county finds that its public school building needs and its school technology needs can be met in a more timely fashion through the allocation of financial resources previously allocated for purposes other than school building needs or school technology needs and not restricted for use in meeting public school building needs or school technology needs, the county commissioners may, with the concurrence of the affected local Board of Education, use those financial resources to meet school building needs and school technology needs and may allocate the funds it receives under this Article for purposes other than school building needs or school technology needs to the extent that financial resources were redirected from such purposes. The concurrence described herein shall be secured in advance of the allocation of the previously unrestricted financial resources and shall be on a form prescribed by the Local Government Commission.

(c) Monies in the Fund allocated for capital projects shall be matched on the basis of one dollar of local funds for every three dollars of State funds. Monies in the Fund transferred to the State Technology Fund do not require a local match.

Revenue received from local sales and use taxes that is restricted for public school capital outlay purposes pursuant to G.S. 105-502 or G.S. 105-487 may be used to meet the local matching requirement. Funds expended by a county after July 1, 1986, for land acquisition, engineering fees, architectural fees, or other directly related costs for a public school building capital project that was not completed prior to July 1, 1987, may be used to meet the local match requirement.

(d) Monies transferred into the Fund in accordance with Chapter 18C of the General Statutes shall be allocated for capital projects for school construction projects as follows:

(1) A sum equal to sixty-five percent (65%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education.

(2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the

effective county tax rate as a percentage of the State average effective tax rate is greater than one hundred percent (100%), with the following definitions applying to this subdivision:

a. "Effective county tax rate" means the actual county rate for the previous fiscal year, including any countywide supplemental taxes levied for the benefit of public schools, multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.

b. "State average effective tax rate" means the average effective county tax rates for all counties.

c. "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(3) No county shall have to provide matching funds required under subsection (c) of this section.

(4) A county may use monies in this Fund to pay for school construction projects in local school administrative units and to retire indebtedness incurred for school construction projects incurred on or after January 1, 2003.

(5) A county may not use monies in this Fund to pay for school technology needs. (1987, c. 622, s. 12; c. 813, ss. 18.1, 19.1, 21; 1991 (Reg. Sess., 1992), c. 1030, s. 30; 1997-221, s. 27; 2005-276, s. 31.1(hh); 2005-344, s. 15.2; 2006-66, s. 7.15; 2006-259, s. 8(i).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 7.15, effective July 1, 2006, substituted "rate, including any countywide supplemental taxes levied for the benefit of public schools" for "rate" in subdivision (d)(2)a.

Session Laws 2006-259, s. 8(i), effective August 23, 2006, in subdivision (d)(2), substituted "State average effective" for "effective State average" in the middle of the introductory paragraph, and inserted "for the previous fiscal year" following "tax rate" in the middle of subdivision (d)(2)(a).

SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

Article 39.

Nonpublic Schools.

Part 4. Miscellaneous Requirements.

§ 115C-566. Driving eligibility certificates; requirements.

(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Department of Administration and representatives of nonpublic schools, shall adopt rules for the procedures a person who is or was enrolled in a home school, in a nonpublic school that is not accredited by the State Board of Education, or in an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law, must follow and the requirements that person must meet to obtain a driving eligibility certificate. The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

(2) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

The rules shall define exemplary student behavior, define what constitutes the successful completion of a drug or alcohol treatment counseling program, and provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate.

(b) The Secretary of Administration shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in home schools or nonpublic schools.

(c) In accordance with rules adopted by the Secretary under this section, persons who are required to sign driving eligibility certificates that meet the conditions established in G.S. 20-11 shall obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles and shall notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets the conditions under G.S. 20-11(n)(1) or G.S. 20-11(n1). (1997-507, s. 5; 1998-212, s. 9.21(d); 1999-243, s. 6; 2006-264, s. 59(a).)

Effect of Amendments. — Session Laws 2006-264, s. 59(a), effective August 27, 2006, substituted "Department of Administration" for "Office of the Governor" in the first sentence of subsection (a).

Chapter 115D.

Community Colleges.

Article 1.

General Provisions for State Administration.

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Article 1.

General Provisions for State Administration.

§ 115D-2. Definitions.

As used in this Chapter:

(1) The "administrative area" of an institution comprises the county or counties directly responsible for the local financial support and local administration of such institution as provided in this Chapter.

(2) The term "community college" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the service area which it serves, and may offer

a. The freshmen and sophomore courses of a college of arts and sciences, authorized by G.S. 115D-4.1;

b. Organized credit curricula for the training of technicians; curricular courses may carry transfer credit to a senior college or university where the course is comparable in content and quality and is appropriate to a chosen course of study;

c. Vocational, trade, and technical specialty courses and programs, and

d. Courses in general adult education.

(3) The term "institution" refers to any institution established pursuant to this Chapter.

(4) The term "regional institution" means an institution whose service area as assigned by the State Board of Community Colleges includes three or more counties; provided, however, any institution receiving funds as a regional institution on May 1, 1987, shall continue to receive funds on that basis.

(5) The term "State Board" refers to the State Board of Community Colleges.

(6) The "tax-levying authority" of an institution is the board of commissioners of the county or all of the boards of commissioners of the counties, jointly, which constitute the administrative area of the institution.

(7) Repealed by Session Laws 1987, c. 564, s. 1.

(8) **(Effective until July 1, 2007)** "Vending facilities" has the same meaning as it does in G.S. 143-12.1.

(8) **(Effective July 1, 2007)** "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means. (1963, c. 448, s. 23; 1969, c. 562, s. 2; 1973, c. 590, s. 1; 1979, c. 462, s. 2; c. 553; c. 896, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 761, s. 104; 1983 (Reg. Sess., 1984), c. 1034, s. 169; 1987, c. 564, s. 1; 1999-84, s. 1; 2005-103, s. 4; 2006-203, s. 35.)

Subdivision (8) Set Out Twice. — The first version of subdivision (8) set out above is effective until July 1, 2007. The second version of subdivision (8) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 35, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, rewrote subdivision (8).

§ 115D-2.1. State Board of Community Colleges.

(a) The State Board of Community Colleges is established.

(b) The State Board of Community Colleges shall consist of 21 members, as follows:

(1) The Lieutenant Governor or the Lieutenant Governor's designee shall be a member ex officio.

(2) The Treasurer of North Carolina or the Treasurer's designee shall be a member ex officio.

(3) The Governor shall appoint to the State Board four members from the State at large and one member from each of the six Trustee Association Regions defined in G.S. 115D-62. The initial appointments by the Governor shall be made effective July 1, 1980, or as soon as feasible thereafter. In order to establish regularly overlapping terms, the initial appointments by the Governor shall be made so that three expire June 30, 1981, three expire June 30, 1983, and four expire June 30, 1985. Each subsequent regular appointment by the Governor shall be for a term of six years and until a successor is appointed and qualifies. Any vacancy occurring among his appointees before the expiration of term shall be filled by appointment of the Governor; the member so appointed shall meet the same residential qualification, if any, as the member whom he succeeds and shall serve for the remainder of the unexpired term of that member.

(4) The General Assembly shall elect eight members of the State Board from the State at large in the following manner:

a. In 1980, the Senate shall elect three members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and one of whom shall serve a term expiring June 30, 1985. In 1985, the Senate shall elect two members to serve terms expiring June 30, 1991. Each subsequent regular election by the Senate shall be for a term of six years and until a successor is elected and qualifies.

b. In 1980, the House of Representatives shall elect four members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and two of whom shall serve a term expiring June 30, 1985. In 1985, the House of Representatives shall elect two members, to serve terms expiring June 30, 1991. Each subsequent regular election by the House of Representatives shall be for a term of six years and until a successor is elected and qualifies.

c. Repealed by Session Laws 1985, c. 227, s. 5.

d. The initial elections by the two houses of the General Assembly shall be held on or before July 1, 1980.

e. Any vacancy occurring among the members elected by the two houses of the General Assembly before the expiration of term shall be filled when the General Assembly next convenes. The member then elected shall be elected by the same house that elected the member whom he succeeds, and shall serve for the remainder of the unexpired term of that member.

f. At each session of the General Assembly held in an odd-numbered year, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign to either a standing or a special committee of that house the duty of receiving from the members of that house nominations of persons to be considered by that house for election to the State Board. The chairmen of the two committees shall jointly determine a common final date for receiving nominations from members of that house, and a common date for reporting to their respective houses their nominations for the State Board. Each committee shall screen the proposed candidates for nomination as to their qualifications, background, lack of statutory disabilities, and willingness and ability to serve if elected. Each Senator and each Representative may nominate only one candidate. When the nominating process is closed, each committee shall list all candidates and shall separately vote "aye" or "no" on each candidate to determine whether that person shall be listed as a nominee of the committee. The verbal vote of a majority of those members of the committee present and voting shall constitute one nominee of the committee. An individual cannot be a candidate for nomination to more than one place. If a sufficient number of candidates is submitted to each committee, then each committee shall nominate at least two persons for each place to be filled by that chamber, otherwise each committee shall nominate at least one person for each place to be filled by each of the House of Representatives and the Senate. No person may simultaneously be a candidate for election by both houses, and if one is nominated in both houses, he shall determine by which house he shall be nominated and so advise the chairman of both committees. The two houses shall, by joint resolution, fix a common date and time for the election of members of the State Board. At the election session in each house, the committee shall report its list of nominees with the term of office indicated for each nominee. The ballot in the House of Representatives shall also include the names of all other persons nominated by a member of that house who are determined by the committee to be qualified for the offices, with the committee's list of nominees being clearly set out on the ballot. No additional nominations shall be received from the floor. Each house shall then proceed to an election of the State Board. In order to be chosen, a nominee shall receive the votes of a majority of all members present and voting.

When each house has chosen one person for each place to be filled on the State Board, the chairman of the committee shall make a motion for the simultaneous election of those persons by that house to the indicated positions and for the indicated terms. The vote shall then be called electronically. If a majority of those voting shall vote "aye," persons named in the motion shall be declared to have been elected. Each house may adopt rules consistent with this section with respect to the election by that house of members of the State Board.

(5) The person serving as president of the North Carolina Comprehensive Community College Student Government Association shall be an ex officio member of the State Board. If the president of the Association is unable for any reason to serve as the student member of the State Board, then pursuant to the constitution of the Association, the vice-president of the Association shall serve as the student member of the State Board. Any person serving as the student member of the State Board must be a student in good standing at a North Carolina community college. The student member of the State Board shall have all the rights and privileges of membership, except that the student member shall not have a vote.

(b1) Upon receipt of a referral from the State Ethics Commission in accordance with G.S. 138A-12(k) concerning a member of the State Board of Community Colleges, the principal clerk of the house of the General Assembly receiving the referral shall immediately refer the matter to the appropriate education committee of that house. That committee may recommend to that house a resolution providing for the removal of the Board member. If the committee's proposed resolution is adopted by a majority of the members present and voting of that house, the public servant shall be removed and the seat previously held by that Board member becomes vacant.

(c) No person may be appointed or elected to more than two consecutive terms of six years on the State Board.

(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board and no spouse of any of those persons, shall be eligible to serve on the State Board. Furthermore, no person who within the prior five years has been an employee of the Community Colleges System Office shall be eligible to serve on the State Board.

(e) The Governor shall convene the membership of the State Board on July 1, 1980, or as soon as feasible thereafter. The State Board at that meeting shall elect from its appointed or elected membership a chairman and such other officers as it may deem necessary.

(f) At its first meeting after July 1, 1981, and every two years thereafter, the State Board shall elect from its membership a chairman and such other officers as it may deem necessary.

(g) The State Board of Community Colleges shall meet at stated times established by the State Board, but not less frequently than 10 times a year. The State Board of Community Colleges shall also meet with the State Board of Education and the Board of Governors of The University of North Carolina at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State; these joint meetings shall be hosted by the three Boards according to the schedule set out in G.S. 115C-11(b1). Special meetings of the State Board may be set at any regular meeting or may be called by the chairman. A majority of the qualified members of the State Board shall constitute a quorum for the transaction of business.

(h) Whenever any vacancy shall occur in the appointed membership of the State Board, the chairman shall inform the appropriate appointing authority of the vacancy.

(i) The State Board of Community Colleges may declare vacant the office of an appointed or elected member who does not attend three consecutive scheduled meetings without justifiable excuse. The chairman of the State Board shall notify the appropriate appointing or electing authority of any vacancy. (1979, c. 896, s. 2; 1979, 2nd Sess., c. 1130, s. 5; 1981, c. 47, s. 8; c. 474; 1983, c. 311; c. 479, ss. 1-3; 1985, c. 227, ss. 1-5; c. 428; 1987 (Reg. Sess., 1988), c. 1102, s. 2; 1991, c. 83, s. 1; 1993, c. 69, s. 2; 1995, c. 192, s. 1; c. 470, ss. 3, 4; 1997-456, ss. 18, 19; 1999-61, ss. 1, 2; 1999-84, s. 7; 2006-31, s. 1; 2006-201, s. 2(c).)

Editor's Note. —

Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-31, s. 1, effective June 29, 2006, substituted "or the Lieutenant Governor's designee" for "(or a person designated by the Lieutenant Governor)" in subdivision (b)(1); and added "or the Treasurer's designee" in subdivision (b)(2).

Session Laws 2006-201, s. 2(c), effective October 1, 2006, and applicable to covered persons and legislative employees, gifts received, acts and conflicts of interests that arise, and offenses committed on or after January 1, 2007, added subsection (b1).

§ 115D-3. Community Colleges System Office; staff.

Editor's Note. —

Session Laws 2006-66, s. 8.10(a)-(c), provides: "(a) Of the funds appropriated to the Community Colleges System Office for facilities and equipment needs, the sum of fifteen million dollars ($15,000,000) shall be used to create the Community College Facilities and Equipment Fund. This Fund shall be used for the purpose of awarding grants to community colleges for facility and equipment needs. The Community Colleges System Office, in consultation with the State Board of Community Colleges shall develop a competitive grant application process and guidelines for facility or equipment needs. The State Board of Community Colleges shall award grants on the merit of the applications received. No individual grant may exceed the sum of one million dollars ($1,000,000).

"These grants shall be awarded on a matching basis of one State dollar for every one non-State dollar.

"(b) Beginning September 1, 2006, the Community Colleges System Office shall submit a report to the Office of State Budget and Management and the Fiscal Research Division containing the following information about each grant that was awarded: (i) the name of the community college; (ii) a description of the project; (iii) the project location; (iv) the cost-benefit analysis conducted by the Community Colleges System Office and the rationale for awarding the grant; and (v) the amount of the grant.

"(c) The Community Colleges System Office shall develop guidelines related to the administration of the Community College Facilities and Equipment Fund and to the selection of projects to receive grants from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the System Office must publish the proposed guidelines on the System Office's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the State Board shall accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

"(1) An amendment that corrects a spelling or grammatical error.

"(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 115D-4. (Effective until July 1, 2007) Establishment of institutions; capital improvements.

The establishment of all community colleges shall be subject to the approval of the General Assembly upon recommendation of the State Board of Community Colleges. In no case, however, shall favorable recommendation be made by the State Board for the establishment of an institution until it has been demonstrated to the satisfaction of the State Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor, provided that the Governor may consult with the Advisory Budget Commission before giving approval. The expenditure of State funds at any institution herein authorized to be approved by the State Board shall be subject to the terms of the Executive Budget Act unless specifically otherwise provided in this Chapter. (1963, c. 448, s. 23; 1965, c. 1028; 1971, c. 1244, s. 14; 1977, c. 154, s. 1; 1979, c. 462, s. 2; c. 896, s. 4; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 717, ss. 27-27.2; 1985 (Reg. Sess., 1986), c. 955, s. 21; 1987, c. 564, s. 3.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 115D-4.

§ 115D-4. (Effective July 1, 2007) Establishment of institutions; capital improvements.

The establishment of all community colleges shall be subject to the approval of the General Assembly upon recommendation of the State Board of Community Colleges. In no case, however, shall favorable recommendation be made by the State Board for the establishment of an institution until it has been demonstrated to the satisfaction of the State Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor. The expenditure of State funds at any

G.S. 115D-4 is set out out twice. See notes.

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institution herein authorized to be approved by the State Board shall be subject to the terms of the State Budget Act unless specifically otherwise provided in this Chapter. (1963, c. 448, s. 23; 1965, c. 1028; 1971, c. 1244, s. 14; 1977, c. 154, s. 1; 1979, c. 462, s. 2; c. 896, s. 4; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 717, ss. 27-27.2; 1985 (Reg. Sess., 1986), c. 955, s. 21; 1987, c. 564, s. 3; 2006-203, s. 36.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 115D-4.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 203, s. 36, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in the second paragraph, deleted "provided that the Governor may consult with the Advisory Budget Commission before giving approval" following "Governor" in the first sentence, and in the second sentence, substituted "State Budget Act" for "Executive Budget Act."

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

(a) The State Board of Community Colleges may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the State Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Community Colleges shall establish standards and scales for salaries and allotments paid from funds administered by the State Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The State Board shall have authority with respect to individual institutions: to approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees within policies for tuition and fees established by the General Assembly; and to establish and regulate financial accounting procedures.

The State Board of Community Colleges shall require all community colleges to meet the faculty credential requirements of the Southern Association of Colleges and Schools for all community college programs.

(a1) Notwithstanding G.S. 66-58(c)(3) or any other provisions of law, the State Board of Community Colleges may adopt rules governing the expenditure of funds derived from bookstore sales by community colleges. These expenditures shall be consistent with the mission and purpose of the Community College System. Profits may be used in the support and enhancement of the bookstores, for student aid or scholarships, for expenditures of direct benefit to students, and for other similar expenditures authorized by the board of trustees, subject to rules adopted by the State Board. These funds shall not be used to supplement salaries of any personnel.

(a2) The State Board of Community Colleges shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State.

(a3) The State Board of Community Colleges shall adopt the following rules to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

(1) To establish the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate.

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:

a. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

b. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

(3) To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent.

(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section.

(c) No course of instruction shall be offered by any community college at State expense or partial State expense to any captive or co-opted group of students, as defined by the State Board of Community Colleges, without prior approval of the State Board of Community Colleges. Approval by the State Board of Community Colleges shall be presumed to constitute approval of both the course and the group served by that institution. The State Board of Community Colleges may delegate to the President the power to make an initial approval, with final approval to be made by the State Board of Community Colleges. A course taught without such approval will not yield any full-time equivalent students, as defined by the State Board of Community Colleges.

(c1) Community colleges shall report full-time equivalent (FTE) student hours for correction education programs on the basis of contact hours rather than student membership hours. No community college shall operate a multi-entry/multi-exit class or program in a prison facility, except for a literacy class or program.

The State Board shall work with the Department of Correction on offering classes and programs that match the average length of stay of an inmate in a prison facility.

(d) Recodified as G.S. 115D-5.1(a) by Session Laws 2005-276, s. 8.4(a), effective July 1, 2005.

(e) Repealed by Session Laws 1999-84, s. 3, effective May 21, 1999.

(f) **(Effective until July 1, 2007 — See Editor's note)** A community college may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the Joint Legislative Commission on Governmental Operations, and the Advisory Budget Commission on all new programs it approved during the year.

G.S. 115D-5(f) is set out twice. See note.

The report shall include the specific reasons for which each program was approved.

(f) **(Effective July 1, 2007 — See Editor's note)** A community college may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, and the Joint Legislative Commission on Governmental Operations, on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved.

(g) Funds appropriated to the Community Colleges System Office as operating expenses for allocation to the institutions comprising the North Carolina Community College System shall not be used to support recreation extension courses. The financing of these courses by any institution shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students (FTE) for use in budget-funding formulas at the State level.

(h) Whenever a community college offers real estate continuing education courses pursuant to G.S. 93A-4.1, the courses shall be offered on a self-supporting basis.

(i) Recodified as G.S. 115D-5.1(c) by Session Laws 2005-276, s. 8.4(a), effective July 1, 2005.

(j) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year.

(k) Recodified as G.S. 115D-5.1(b) by Session Laws 2005-276, s. 8.4(a), effective July 1, 2005.

(*l*) The State Board shall review and approve lease purchase and installment purchase contracts as provided under G.S. 115D-58.15(b). The State Board shall adopt policies and procedures governing the review and approval process.

(m) The State Board of Community Colleges shall maintain an education program auditing function that conducts an annual audit of each community college operating under the provisions of this Chapter. The purpose of the annual audit shall be to ensure that college programs and related fiscal operations comply with State law, State regulations, State Board policies, and System Office guidance. The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges. All education program audit findings shall be forwarded to the college president, local college board of trustees, the State Board of Community Colleges, and the State Auditor. The State Board shall assess a twenty-five percent (25%) fiscal penalty in addition to the audit exception on all audits of both dollars and student membership hours excepted when the audit exceptions result from nonprocessing errors.

(n) The North Carolina Community Colleges System Office shall provide the Department of Revenue with a list of all community colleges, including name, address, and other identifying information requested by the Department of Revenue. The North Carolina Community Colleges System Office shall update this list whenever there is a change.

(o) The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by October 1 of each year.

(p) **(Expires July 1, 2011)** The North Carolina Community College System may offer courses, in accordance with the lateral entry program of study established under G.S. 115C-296(c1), to individuals who choose to enter the teaching profession by lateral entry.

(q) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on October 1 of each year on the use of community college facilities by private businesses.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, and the Joint Legislative Commission on Governmental Operations, on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved. (1963, c. 488, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882; 1977, c. 1065; 1979, c. 462, s. 2; c. 896, ss. 5-7; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 609; c. 859, s. 35.1; c. 897; c. 1127, s. 43; 1983, c. 717, s. 28; 1983 (Reg. Sess., 1984), c. 1034, ss. 45, 46; 1985, c. 479, s. 67; 1985 (Reg. Sess., 1986), c. 955, s. 22; 1987, c. 282, s. 34; c. 564, ss. 8-10, 12, 33; c. 763, s. 1; 1989, c. 162; 1989 (Reg. Sess., 1990), c. 915, s. 1; c. 1066, s. 91; 1991, c. 689, ss. 44, 48; 1991 (Reg. Sess., 1992), c. 880, s. 4; 1993, c. 170, s. 2; c. 321, ss. 111, 117(e); c. 492, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 18.4; 1995, c. 288, s. 2; c. 324, s. 16.4; 1996, 2nd Ex. Sess., c. 18, ss. 17.4, 17.7(a); 1997-443, ss. 9.5, 9.6(a), 11A.118(a); 1997-507, s. 4; 1998-111, s. 3; 1998-202, s. 4(q); 1999-84, ss. 3, 9; 1999-243, s. 9; 2000-137, s. 4(t); 2001-111, s. 1; 2001-427, s. 9(b); 2001-487, s. 47(e); 2004-124, s. 8.4; 2005-193, s. 1; 2005-198, s. 3; 2005-247, s. 3; 2005-276, ss. 8.4(a), 8.6; 2005-395, s. 25; 2006-203, s. 37.)

Editor's Note. —

Session Laws 2005-276, s. 8.3(a)-(g), as amended by Session Laws 2006-66, s. 8.1(a), (b), provides: "(a) The minimum salaries for community college faculty shall be based on the following education levels:

"(1) Vocational Diploma/Certificate or Less. — This education level includes faculty members who are high school graduates, have vocational diplomas, or have completed one year of college.

"(2) Associate Degree or Equivalent. — This education level includes faculty members who have an associate degree or have completed two or more years of college but have no degree.

"(3) Bachelors Degree.

"(4) Masters Degree or Education Specialist.

"(5) Doctoral Degree.

"(b) For the 2005-2006 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

Education Level	Minimum Salary 2005-2006
Vocational Diploma/ Certificate or Less	$29,932
Associate Degree or Equivalent	$30,373
Bachelors Degree	$32,283
Masters Degree or Education Specialist	$33,978
Doctoral Degree	$36,421

"No full-time faculty member shall earn less than the minimum salary for his or her education level.

"The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

(b1) For the 2006-2007 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

Education Level	Minimum Salary 2006-2007
Vocational Diploma/Certificate or Less	$31,728
Associate Degree or Equivalent	$32,195
Bachelors Degree	$34,220
Masters Degree or Education Specialist	$36,016
Doctoral Degree	$38,607

No full-time faculty member shall earn less than the minimum salary for his or her education level.

The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

"(c)(1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average, therefore:

"a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.

"b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent (6%) of the State funds allocated to it for faculty salaries.

"c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.

"d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.

"e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

"Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

"(2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.

"(3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for New and Expanding Industry Training to increase faculty salaries.

"(d) As used in this section:

"(1) 'Average faculty salary at a community college' means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the college, as determined by the North Carolina Community College System on October 1 of each year.

"(2) 'National average community college faculty salary' means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

"(e) The State Board of Community Colleges shall adopt rules to implement the provisions of this section.

"(f) The State Board of Community Colleges shall report to the appropriations subcommittees on education, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Fiscal Research Division, and the Office of State Budget and Management by December 1, 2005, and every year thereafter through December 1, 2009, on the implementation of this section.

"(g) For the 2005-2006 fiscal year, funds appropriated in this act for salary increases shall be used to increase faculty and professional staff salaries by an average of two percent (2%). These increases are in addition to other salary increases provided for in this act and shall be calculated on the average salaries prior to the issuance of the compensation increase. For the 2006-2007 fiscal year, funds appropriated in this act for salary increases shall be used to increase faculty and professional staff annual salaries by six percent (6%). Colleges may provide additional increases from funds available.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 37, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in the second paragraph of subsection (f), deleted "and the Advisory Budget Commission" following "Commission on Governmental Operations," and made a minor stylistic change.

Article 2.

Local Administration.

§ 115D-15. Sale, exchange or lease of property; use of proceeds from donated property.

Local Modification. — Chatham: 1995, c. 80, s. 2; Gaston: 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Montgomery: 1995, c. 154, s. 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note) Nash: 1995 (Reg. Sess., 1996), c. 706 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Sampson: 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note), 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Wilson: 1995 (Reg. Sess., 1996), c. 706 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Asheville-Buncombe Technical Community College: 2000-99, ss. 1, 2; Board of Trustees of College of the Albemarle: 2002-57, s. 1 (expiring December 31, 2005); Board of Trustees of Guilford Technical Community College: 2002-57, s. 2 (expiring December 31, 2005); Mayland Community College: 2003-320, s. 1, as amended by 2004-203, s. 81, and as amended by 2006-5, s. 1; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917.

§ 115D-20. Powers and duties of trustees.

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

(1) To elect a president or chief administrative officer of the institution for such term and under such conditions as the trustees may fix, such election to be subject to the approval of the State Board of Community Colleges.

(2) To elect or employ all other personnel of the institution upon nomination by the president or chief administrative officer, subject to standards established by the State Board of Community Colleges. Trustees may delegate the authority of employing such other personnel to its president or chief administrative officer.

(3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, upon approval of the State Board of Community Colleges, and if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in General Statutes Chapter 40A. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive.

(4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Community Colleges. Provided, notwithstanding any law or adminis-

trative rule to the contrary, local administrative boards and local school boards may establish cooperative programs in the areas they serve to provide for college courses to be offered to qualified high school students with college credits to be awarded to those high school students upon the successful completion of the courses. Provided, further, that during the summer quarter, persons less than 16 years old may be permitted to take noncredit courses on a self-supporting basis, subject to rules of the State Board of Community Colleges.

(5) To receive and accept donations, gifts, bequests, and the like from private donors and to apply them or invest any of them and apply the proceeds for purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of this Chapter and the regulations of the State Board of Community Colleges.

(6) To provide all or part of the instructional services for the institution by contracting with other public or private organizations or institutions in accordance with regulations and standards adopted by the State Board of Community Colleges.

(7) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations, and bylaws for the government and operation of the institution under this Chapter and for the discipline of students.

(8) If a board of trustees of an institution provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the board of trustees shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

(9) To encourage the establishment of private, nonprofit corporations to support the institution. The president, with approval of the board of trustees, may assign employees to assist with the establishment and operation of such corporation and may make available to the corporation office space, equipment, supplies and other related resources; provided, the sole purpose of the corporation is to support the institution. The board of directors of each private, nonprofit corporation shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an annual audit of the financial accounts of the corporation. The board of directors shall transmit to the board of trustees a copy of the annual financial audit report of the private nonprofit corporation.

(10) To enter into guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(11) To enter into lease purchase and installment purchase contracts for equipment under G.S. 115D-58.15.

(12) Notwithstanding the provisions of this Chapter, a community college may permit the use of its personnel or facilities, in support of or by a private business enterprise located on a community college campus or in the service area of a community college for the specific purposes set out in G.S. 66-58(c)(3a) and G.S. 66-58(c)(3d). The board of trustees of a community college must specifically approve any use of facilities or personnel under this subdivision. The State Board shall adopt rules to implement this subdivision, G.S. 66-58(c)(3a), and G.S. 66-58(c)(3d).

(13) To enter into a public/private partnership in which all of the following conditions are met:

a. The agreement is approved in advance by the State Board of Community Colleges.

b. The board of trustees agrees to lease community college land to a private entity on condition that the entity construct a facility on the leased land.

c. The facility will be jointly owned and used by the private entity and the community college.

d. The board of trustees is not authorized to lease the facility as lessee under a long-term lease or capital lease from the private entity as lessor.

e. The board of trustees is not authorized to finance its portion of the facility by entering into an installment contract or other financing contract with the private entity.

f. State bond funds shall not be used to pay for construction of that part of the facility to be owned and used by the private entity.

g. The provisions of G.S. 143-341(3)a. apply to the construction of a facility under this subsection. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 901, s. 2; 1983, c. 378, s. 1; c. 596, s. 1; 1985, c. 191; 1987, c. 383, s. 2; 1993 (Reg. Sess., 1994), c. 775, s. 7; 1998-111, s. 1; 2001-368, s. 2; 2003-286, s. 1; 2005-247, s. 2; 2006-259, s. 21.)

Effect of Amendments. — Session Laws 2006-259, s. 21, effective August 23, 2006, inserted "and" following "State Board of Community Colleges" in the middle of the first sentence.

Article 3.

Financial Support.

§ 115D-31. State financial support of institutions.

(a) The State Board of Community Colleges shall be responsible for providing, from sources available to the State Board, funds to meet the financial needs of institutions, as determined by policies and regulations of the State Board, for the following budget items:

(1) **(Effective until July 1, 2007)** Plant Fund. — Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodeling of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State. Notwithstanding the provisions of this subdivision, G.S. 116-53(b), or G.S. 143-31.4, appropriations by the State of North Carolina for capital or permanent improvements for community colleges may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes.

G.S. 115D-31(a)(1) is set out twice. See note.

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(1) **(Effective July 1, 2007)** Plant Fund. — Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodeling of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State. Notwithstanding the provisions of this subdivision, G.S. 116-53(b), or G.S. 143C-4-5, appropriations by the State of North Carolina for capital or permanent improvements for community colleges may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes.

(2) Current Operating Expenses:
  a. General administration. — Salaries and other costs as determined by the State Board necessary to carry out the functions of general administration.
  b. Instructional services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of instructional services.
  c. Support services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of support services.

(3) Additional Support for Regional Institutions as Defined in G.S. 115D-2(4). — Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32(a)(2)a. Amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the administrative area in which the regional institution is located shall be called the "local factor," the combined populations of all other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115D-32(a)(2)a has been approved under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest United States census.

(b) The State Board is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions.

(c) State funds appropriated to the State Board of Community Colleges for equipment and library books, except for funds appropriated to the Equipment Reserve Fund, shall revert to the General Fund 12 months after the close of the fiscal year for which they were appropriated. Encumbered balances outstanding at the end of each period shall be handled in accordance with existing State budget policies. The System Office shall identify to the Office of State Budget and Management the funds that revert at the end of the 12 months after the close of the fiscal year.

(d) State funds appropriated to the State Board of Community Colleges for the Equipment Reserve Fund shall be allocated to institutions in accordance with the equipment allocation formula for the fiscal period. An institution to which these funds are allocated shall spend the funds only in accordance with an equipment acquisition plan developed by the institution and approved by the State Board.

These funds shall not revert and shall remain available until expended in accordance with an approved plan.

(e) If receipts for community college tuition and fees exceed the amount certified in General Fund Codes at the end of a fiscal year, the State Board of Community Colleges shall transfer the amount of receipts and fees above those budgeted to the Equipment Reserve Fund. (1963, c. 448, s. 23; 1973, c. 590, ss. 2, 3; c. 637, s. 1; 1979, c. 462, s. 2; c. 896, s. 13; c. 946, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 2; 1985, c. 757, s. 146; 1987, c. 564, ss. 9, 12; 1995, c. 324, s. 16; 1998-212, s. 10.2(a); 1999-84, s. 11; 1999-237, s. 9.3(a); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 38.)

Subdivision (a)(1) Set Out Twice. — The first version of subdivision (a)(1) set out above is effective until July 1, 2007. The second version of subdivision (a)(1) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 8.10(a)-(c), provides: "(a) Of the funds appropriated to the Community Colleges System Office for facilities and equipment needs, the sum of fifteen million dollars ($15,000,000) shall be used to create the Community College Facilities and Equipment Fund. This Fund shall be used for the purpose of awarding grants to community colleges for facility and equipment needs. The Community Colleges System Office, in consultation with the State Board of Community Colleges shall develop a competitive grant application process and guidelines for facility or equipment needs. The State Board of Community Colleges shall award grants on the merit of the applications received. No individual grant may exceed the sum of one million dollars ($1,000,000).

"These grants shall be awarded on a matching basis of one State dollar for every one non-State dollar.

"(b) Beginning September 1, 2006, the Community Colleges System Office shall submit a report to the Office of State Budget and Management and the Fiscal Research Division containing the following information about each grant that was awarded: (i) the name of the community college; (ii) a description of the project; (iii) the project location; (iv) the cost-benefit analysis conducted by the Community Colleges System Office and the rationale for awarding the grant; and (v) the amount of the grant.

"(c) The Community Colleges System Office shall develop guidelines related to the administration of the Community College Facilities and Equipment Fund and to the selection of projects to receive grants from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the System Office must publish the proposed guidelines on the System Office's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the State Board shall accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

"(1) An amendment that corrects a spelling or grammatical error.

"(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 38, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-4-5" for "G.S. 143-31.4" in subdivision (a)(1).

§ 115D-31.3. Performance budgeting.

(a) Creation of Accountability Measures and Performance Standards. — The State Board of Community Colleges shall create new accountability measures and performance standards to be used for performance budgeting for the Community College System. Survey results shall be used as a performance standard only if the survey is statistically valid. The State Board of Community Colleges shall review annually the accountability measures and performance standards to ensure that they are appropriate for use in performance budgeting.

(b) through (d) Repealed by Session Laws 2000-67, s. 9.7, effective July 1, 2000.

(e) Mandatory Performance Measures. — The State Board of Community Colleges shall evaluate each college on the following 12 performance standards:

(1) Progress of basic skills students,
(2) Passing rate for licensure and certification examinations,
(3) The proportion of those who complete their goal,
(4) Employment status of graduates,
(5) Performance of students who transfer to the university system,
(6) Passing rates in developmental courses,
(7) Success rates of developmental students in subsequent college-level courses,
(8) The level of satisfaction of students who complete programs and those who do not complete programs,
(9) Curriculum student retention and graduation,
(10) Employer satisfaction with graduates,
(11) Client satisfaction with customized training, and
(12) Program enrollment.

(f) Publication of Performance Ratings. — Each college shall publish its performance on the 12 measures set out in subsection (e) of this section (i) annually in its electronic catalog or on the Internet and (ii) in its printed catalog each time the catalog is reprinted.

The Community Colleges System Office shall publish the performance of all colleges on all 12 measures in its annual Critical Success Factors Report.

(g) Performance Budgeting; Recognition for Successful Performance. — For the purpose of performance budgeting, the State Board of Community Colleges shall evaluate each college on six performance measures. These six shall be the five set out in subdivisions (1) through (5) of subsection (e) of this section and one selected by the college from the remainder set out in subdivisions (6) through (11). For each of these six performance measures on which a college performs successfully or attains the standard of significant improvement, the college may retain and carry forward into the next fiscal year one-third of one percent (⅓ of 1%) of its final fiscal year General Fund appropriations.

(h) Performance Budgeting; Recognition for Superior Performance. — Funds not allocated to colleges in accordance with subsection (g) of this section shall be used to reward superior performance. After all State aid budget obligations have been met, the State Board of Community Colleges shall distribute the remainder of these funds equally to colleges that perform successfully on at least five of the six performance measures.

(i) Permissible Uses of Funds. — Funds retained by colleges or distributed to colleges pursuant to this section shall be used for the purchase of equipment, initial program start-up costs including faculty salaries for the first year of a program, and one-time faculty and staff bonuses. These funds shall not be used for continuing salary increases or for other obligations beyond the fiscal year into which they were carried forward. These funds shall be encumbered within 12 months of the fiscal year into which they were carried forward.

(j) Use of funds in low-wealth counties. — Funds retained by colleges or distributed to colleges pursuant to this section may be used to supplement local funding for maintenance of plant if the college does not receive maintenance of plant funds pursuant to G.S. 115D-31.2, and if the county in which the main campus of the community college is located:

(1) Is designated as a Tier 1 or Tier 2 county in accordance with G.S. 105-129.3;
(2) Had an unemployment rate of at least two percent (2%) above the State average or greater than seven percent (7%), whichever is higher, in the prior calendar year; and
(3) Is a county whose wealth, as calculated under the formula for distributing supplemental funding for schools in low-wealth counties, is eighty percent (80%) or less of the State average.

Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended. (1999-237, s. 9.2(a); 2000-67, s. 9.7; 2001-186, s. 1; 2006-66, s. 8.9(a).)

Editor's Note. —
Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 8.9(a), effective June 30, 2006, added subsection (j).

§ 115D-41. Restrictions on contracts with local school administrative units; use of community college facilities by public school students pursuant to cooperative programs.

(a) Community college contracts with local school administrative units shall not be used by these agencies to supplant funding for a public school high school teacher providing courses offered pursuant to G.S. 115D-20(4) who is already employed by the local school administrative unit. However, if a community college contracts with a local school administrative unit for a public high school teacher to teach a college level course, the community college shall not generate budget FTE for that course. Its reimbursement in this case shall be limited to the direct instructional costs contained in the contract, plus fifteen percent (15%) for administrative costs. In no event shall a community college contract with a local school administrative unit to provide high school level courses.

(b) Community college facilities that comply with applicable State, county, and local fire codes for community college facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs. (1991 (Reg. Sess., 1992), c. 900, s. 82(a); 2006-66, s. 8.11(a); 2006-221, s. 5.)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 8.11(a), as added by Session Laws 2006-221, s. 5, effective July 1, 2006, rewrote the section heading; designated the previously undesignated provisions as subsection (a); and added subsection (b).

Chapter 116.

Higher Education.

Article 1.

The University of North Carolina.

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116-41.16. (Effective July 1, 2007) Distinguished Professors Endowment Trust Fund; contribution commitments.

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116-143. (Effective July 1, 2007) State-supported institutions of higher education required to charge tuition and fees.

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ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

Study Feasibility of Adding North Carolina Wesleyan College to UNC System. — Session Laws 2006-66, s. 9.4(a), provides: "The Board of Governors of The University of North Carolina shall study the feasibility of making North Carolina Wesleyan College a constituent institution of The University of North Carolina. The study shall include all of the following:

"(1) Mission. — The Board of Governors shall evaluate the potential missions of the campus that would meet the academic and economic needs of the region, the State, and of the University System. The Board of Governors shall take into account the need to avoid duplication of curriculum and programs at other campuses, particularly those within the same geographic area, unless the need for duplication is warranted. The Board of Governors shall seek recommendations, suggestions, and comments from community leaders, educational experts, and business leaders in defining the mission of the new campus. Particular focus shall be placed on utilizing the campus in a manner that addresses both the economic and educational challenges of the region in a unique and focused manner, such as in the areas of science, technology, education, and economic development.

"(2) Cost. — The Board of Governors shall analyze the potential operating costs of the campus. Factors such as the mission, staff and faculty salaries, benefits, total faculty and staff levels, total projected student enrollment, facility needs, and tuition rates shall be taken into account.

"(3) Facility Needs. — The Board of Governors shall consider what additional facility needs there may be, taking into account the proposed mission of the campus. Examples of those needs may be lab facility upgrades, new buildings to house an expanded student population, and associated infrastructure expansion.

"(4) Asset Transfer. — The Board of Governors shall obtain legal and financial analyses to determine if there are any restrictions attached to any of the College's assets (title to property, gifts to endowment, assets purchased with restricted grant funds, etc.) that would prohibit the transfer of the assets to the State. If there are restrictions, then the analyses shall also include the steps necessary to lift the restrictions and the costs of obtaining a clear title.

"(5) Liability Analysis. — The Board of Governors shall also obtain a legal analysis to determine whether there are pending liabilities against the campus or reasonably foreseeable future liabilities against the campus. If there are such liabilities, the legal analysis shall also address the action needed to avoid transfer of any liability to the State.

"(6) Transition of Current Students/Programs. — The Board of Governors shall consider how best to handle the transition of the currently enrolled student population, both on and off campus, into continuing or new curriculum programs during the conversion period.

"(7) Personnel. — The Board of Governors shall assess the employment status of current personnel to determine what, if any, contractual and other employment issues may arise in the conversion.

"(8) Legislative Action. — The Board of Governors shall determine the legislative action and statutory amendments needed to authorize and implement the conversion."

Editor's Note. — Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 116-2. Definitions.

As used in this Article, unless the context clearly indicates a contrary intent:

(1) "Board" means the Board of Governors of the University of North Carolina.

(2) "Board of trustees" means the board of trustees of a constituent institution.

(3) "Chancellor" means the chancellor of a constituent institution.

(4) **(Effective until July 1, 2007)** "Constituent institution" or "institution" means one of the 16 public senior institutions, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State University.

(4) **(Effective July 1, 2007)** "Constituent institution" or "institution" means one of the 16 public institutions of higher education, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State University, and the constituent high school, the North Carolina School of Science and Mathematics.

(5) "President" means the President of the University of North Carolina.

(6) **(Effective until July 1, 2007)** "Vending facilities" has the same meaning as it does in G.S. 143-12.1.

(6) **(Effective July 1, 2007)** "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means. (1971, c. 1244, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s.

G.S. 116-2(4) and (6) are set out twice. See note.

171; 1995 (Reg. Sess., 1996), c. 603, s. 1; 2006-66, s. 9.11(a); 2006-203, s. 39.)

Subdivisions (4) and (6) Set Out Twice. — The first versions of subdivisions (4) and (6) set out above are effective until July 1, 2007. The second versions of subdivisions (4) and (6) set out above are effective July 1, 2007.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-66, s. 9.11(a), effective July 1, 2007, in subdivision (4), substituted "institutions of higher education" for "senior institutions" near the beginning, and added "and the constituent high school, the North Carolina School of Science and Mathematics" at the end.

Session Laws 2006-203, s. 39, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, rewrote subdivision (6).

Part 2. Organization, Governance and Property of the University.

§ 116-4. (Effective until July 1, 2007) Constituent institutions of the University of North Carolina.

On July 1, 1972, the University of North Carolina shall be composed of the following institutions: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 2.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 114-4.

§ 116-4. (Effective July 1, 2007) Constituent institutions of the University of North Carolina.

The University of North Carolina shall be composed of the following institutions of higher education: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pem-

G.S. 116-4 is set out twice. See notes.

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broke", Western Carolina University and Winston-Salem State University, and the constituent high school, the North Carolina School of Science and Mathematics. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 2; 2006-66, s. 9.11(b).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-4.

Editor's Note. — Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11(b), effective July 1, 2007, substituted "The" for "On July 1, 1972, the", and substituted "institutions of higher education" for "institutions" near the beginning; and added "and the constituent high school, the North Carolina School of Science and Mathematics" at the end.

§ 116-7. General provisions concerning members of the Board of Governors.

(a) All members of the Board of Governors shall be selected for their interest in, and their ability to contribute to the fulfillment of, the purposes of the Board of Governors, and all members shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State. In electing members, the objective shall be to obtain the services of the citizens of the State who are qualified by training and experience to administer the affairs of The University of North Carolina. Members shall be selected based upon their ability to further the educational mission of The University through their knowledge and understanding of the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.

(b) From and after July 1, 1973, no member of the General Assembly or officer or employee of the State or of any constituent institution or spouse of any such member, officer or employee may be a member of the Board of Governors. Any member of the Board of Governors who is elected or appointed to the General Assembly or who becomes an officer or employee of the State or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes such officer or employee shall be deemed thereupon to resign from his membership on the Board of Governors.

(b1) Upon receipt of a referral from the State Ethics Commission in accordance with G.S. 138A-12(k) concerning a member of the Board of Governors, the principal clerk of the house of the General Assembly receiving the referral shall immediately refer the matter to the appropriate education committee of that house. That committee may recommend to that house a resolution providing for the removal of the Board member. If the committee's proposed resolution is adopted by a majority of the members present and voting of that house, the public servant shall be removed and the seat previously held by that Board member becomes vacant.

(c) Whenever any vacancy shall occur in the elected membership of the Board of Governors, it shall be the duty of the Board to inform the Speaker of the House of Representatives and the President of the Senate of the vacancy. The chamber that originally elected the vacating member shall elect a person to fill the vacancy. The vacancy shall remain unfilled until the appropriate chamber of the General Assembly elects a person to fill the vacancy.

The vacancy shall be filled not later than the adjournment sine die of the next regular session of the General Assembly. The election shall be for the remainder of the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for four successive regular meetings of the Board, his place as a member shall be deemed vacant. (1971, c. 1244, s. 1; 1977, c. 875; 1982, Ex. Sess., c. 1, s. 1; 1991, c. 436, s. 2; 2001-503, s. 2; 2006-201, s. 2(b).)

Editor's Note. —

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Effect of Amendments. — Session Laws 2006-201, s. 2(b), effective October 1, 2006, and applicable to covered persons and legislative employees, to gifts received, to acts and conflicts of interest that arise, and to offenses committed on or after January 1, 2007, added subsection (b1).

§ 116-11. Powers and duties generally.

The powers and duties of the Board of Governors shall include the following:

(1) **(Effective until July 1, 2007)** The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Community Colleges, the Community Colleges System Office and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, the Advisory Budget Commission and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college system, shall be administered by the Board pursuant to any requirements of State or federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.

(1) **(Effective July 1, 2007)** The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Community Colleges, the Community Colleges System Office and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college

G.S. 116-11(1), (9)a. and (12) are set out twice. See notes.

system, shall be administered by the Board pursuant to any requirements of State or federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.

(2) The Board of Governors shall be responsible for the general determination, control, supervision, management and governance of all affairs of the constituent institutions. For this purpose the Board may adopt such policies and regulations as it may deem wise. Subject to applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Governors may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property, with the exception of any property that may be held by trustees of institutional endowment funds under the provisions of G.S. 116-36 or that may be held, under authority delegated by the Board of Governors, either by a board of trustees or by trustees of any other endowment or trust fund.

(3) The Board shall determine the functions, educational activities and academic programs of the constituent institutions. The Board shall also determine the types of degrees to be awarded. The powers herein given to the Board shall not be restricted by any provision of law assigning specific functions or responsibilities to designated institutions, the powers herein given superseding any such provisions of law. The Board, after adequate notice and after affording the institutional board of trustees an opportunity to be heard, shall have authority to withdraw approval of any existing program if it appears that the program is unproductive, excessively costly or unnecessarily duplicative. The Board shall review the productivity of academic degree programs every two years, using criteria specifically developed to determine program productivity.

(4) The Board of Governors shall elect officers as provided in G.S. 116-14. Subject to the provisions of section 18 of this act [Session Laws 1971, Chapter 1244, section 18], the Board shall also elect, on nomination of the President, the chancellor of each of the constituent institutions and fix his compensation. The President shall make his nomination from a list of not fewer than two names recommended by the institutional board of trustees.

(5) The Board of Governors shall, on recommendation of the President and of the appropriate institutional chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers and persons having permanent tenure.

(5a) [Expired.]

(5b) The Board of Governors may by resolution provide that, until July 1, 1998, every president, vice-president, and other administrative officer of the University whom it elects and who is not subject to Chapter 126 of the General Statutes, and every chancellor, vice-chancellor, senior academic officer, senior administrative officer, and faculty member who serves a constituent institution or agency of the University and who is not subject to Chapter 126 of the General Statutes, shall retire on July 1 coincident with or next following his seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the Board of Governors.

(6) The Board shall approve the establishment of any new publicly supported institution above the community college level.

(7) The Board shall set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.

G.S. 116-11(1), (9)a. and (12) are set out twice. See notes.

(8) The Board shall set enrollment levels of the constituent institutions.

(8a) The Board of Governors, after consultation with representatives from nonpublic schools, including representatives of nonpublic schools operated under Parts 1 and 3 of Article 39 of Chapter 115C of the General Statutes, and after taking into consideration comments received from the Joint Legislative Education Oversight Committee, shall adopt a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The policy shall not arbitrarily differentiate between applicants based upon whether the applicant attended a public or a lawfully operated nonpublic school.

(9)a. **(Effective until July 1, 2007)** The Board of Governors shall develop, prepare and present to the Governor, the Advisory Budget Commission and the General Assembly a single, unified recommended budget for all of public senior higher education. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas. The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget.

b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the Board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum for allocation to the institutions. The Board shall make allocations among the institutions in accordance with the Board's schedule of priorities and any specifications in the Current Operations Appropriations Act. When both the Board and the Director of the Budget deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. Provided, nothing herein shall be construed to allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions in any specifications as to priorities in the third category. Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.

c. The Director of the Budget may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over or under enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions. Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.

d. Repealed by Session Laws 1987, c. 795, s. 27.

(9)a. **(Effective July 1, 2007)** The Board of Governors shall develop, prepare and present to the Governor and the General Assembly a single, unified recommended budget for all of the constituent institutions of The University of North Carolina. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programsand activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas. The president may present to the General Assembly an updated estimate of tuition, fees, and other receipts by June 15 of each year to be included in the budget for the following fiscal year.

b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the Board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum for allocation to the institutions. The Board shall make allocations among the institutions in accordance with the Board's schedule of priorities and any specifications in the Current Operations Appropriations Act. When both the Board and the Director of the Budget deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. Provided, nothing herein shall be construed to allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions in any specifications as to priorities in the third category.

c. The Director of the Budget may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over or under enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions.

d. Repealed by Session Laws 1987, c. 795, s. 27.

(10) The Board shall collect and disseminate data concerning higher education in the State. To this end it shall work cooperatively with the Community Colleges System Office and shall seek the assistance of the private colleges and universities. It may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable.

(10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with private higher education institutions defined in G.S. 116-22(1), shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, "institutions of higher education" shall mean public higher education institutions defined in G.S.

116-143.1(a)(3), and those private higher education institutions defined in G.S. 116-22(1) that choose to participate in the information exchange. The information shall include:
a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;
b. College performance of high school graduates for the year immediately following high school graduation including each student's: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State;
c. The progress of students from one institution of higher education to another; and
d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including course code, name, units earned toward graduation, and credits earned for admission from an institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education.

The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter.

(10b) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges on the academic performance of that community college's transfer students.

(11) The Board shall assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State.

(12) **(Effective until July 1, 2007)** The Board shall give advice and recommendations concerning higher education to the Governor, the General Assembly, the Advisory Budget Commission, and the boards of trustees of the institutions.

(12) **(Effective July 1, 2007)** The Board shall give advice and recommendations concerning higher education to the Governor, the General Assembly, and the boards of trustees of the institutions.

(12a) The Board of Governors of The University of North Carolina shall implement, administer, and revise programs for meaningful professional development for professional public school employees based upon the evaluations and recommendations made by the State Board of Education under G.S. 115C-12(26). The programs shall be aligned with State education goals and directed toward improving student academic achievement. The Board of Governors shall submit to the State Board of Education an annual report evaluating the professional development programs administered by the Board of Governors.

(12b) The Board of Governors of The University of North Carolina shall designate the UNC programs that will comprise the UNC Center for School Leadership Development. The Board of Governors shall submit to the Governor and the General Assembly a single, unified recommended budget for the continued operation and expansion of the programs in the Center for School Leadership Development.

(13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. The Board may delegate any part of its authority over the affairs of The University of North Carolina to the President in any case where such delegation appears necessary or prudent to enable The University of North Carolina to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part.

(14) The Board shall possess all powers not specifically given to institutional boards of trustees. (1971, c. 1244, s. 1; 1979, c. 862, s. 8; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 163; c. 717, ss. 29, 30; c. 761, s. 113; 1983 (Reg. Sess., 1984), c. 1019, s. 2; 1985, c. 757, s. 152; 1985 (Reg. Sess., 1986), c. 955, ss. 23-27; 1987, c. 795, s. 27; 1991 (Reg. Sess., 1992), c. 880, ss. 2, 6; c. 1039, s. 25; 1993, c. 407, s. 2; 1993 (Reg. Sess., 1994), c. 677, s. 14; 1995, c. 288, s. 3; 1997-221, s. 12(b); 1997-240, s. 3; 1998-212, s. 11.12(a); 1999-84, s. 19; 2001-424, s. 31.4(b); 2005-276, s. 9.34(b); 2006-66, s. 9.17(a); 2006-95, s. 2.2; 2006-203, s. 40.)

Editor's Note. —

Session Laws 2005-276, s. 9.10(a), (b), as amended by Session Laws 2006-66, s. 9.10(b), provides: "(a) The current Board of Governors' Medical Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Medical Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Medical Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers, and an annual payment of five thousand dollars ($5,000) per year to students who have been accepted for admission to either Duke University School of Medicine, Brody School of Medicine at East Carolina University, the University of North Carolina at Chapel Hill School of Medicine, or the Wake Forest University School of Medicine. The Board may adopt standards, including minimum grade point average and MCAT scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices medicine in North Carolina for four years. An extension of the seven-year period for satisfaction of the service requirements of the scholarship loan may be granted subject to the approval of the State Education Assistance Authority. Such extenuating circumstances may include, but not be limited to, participation in a medical residency program. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice medicine in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-66, s. 9.17(a), effective July 1, 2006, rewrote subsection (12b).

Sessions Laws 2006-95, s. 2.2, effective July 10, 2006, added the second sentence in subdivision (13).

Session Laws 2006-203, s. 40, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium therefter, deleted "the Advisory Budget Commission" following "the General Assembly" near the end of the third sentence in subdivision (1); in subdivision (9), rewrote sub-subdivision a., and deleted the last sentence in sub-subdivision b. and c., which read "Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission"; and in subdivision (12), deleted "the Advisory Budget Commission" following "the General Assembly."

§ 116-12. (Effective until July 1, 2007) Property and obligations.

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the Board of

G.S. 116-12 is set out twice. See note.

Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 4.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-12.

§ 116-12. (Effective July 1, 2007) Property and obligations.

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. All property of whatsoever kind and all rights and privileges held by the Board of Trustees of the North Carolina School of Science and Mathematics, as said property, rights and privileges may exist immediately prior to July 1, 2007, shall be and hereby are, effective July 1, 2007, transferred to and vested in the Board of Governors of The University of North Carolina. All obligations of whatsoever kind of the Board of Trustees of the North Carolina School of Science and Mathematics as said obligations may exist immediately prior to July 1, 2007, shall be, and the same hereby are, effective July 1, 2007, transferred to and assumed by the Board of Governors of The University of North Carolina. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the

G.S. 116-12 is set out twice. See notes.

Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 4; 2006-66, s. 9.11(c).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-12.

Editor's Note. — Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11(c), effective July 1, 2007, added the fourth and fifth sentences.

§ 116-14. President and staff.

(a) The Board shall elect a President of the University of North Carolina. The President shall be the chief administrative officer of the University.

(b) The President shall be assisted by such professional staff members as may be deemed necessary to carry out the provisions of this Article, who shall be elected by the Board on nomination of the President. The Board shall fix the compensation of the staff members it elects. These staff members shall include a senior vice-president and such other vice-presidents and officers as may be deemed desirable. Provision shall be made for persons of high competence and strong professional experience in such areas as academic affairs, public service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs and institutional development, and for State and federal programs administered by the Board. In addition, the President shall be assisted by such other employees as may be needed to carry out the provisions of this Article, who shall be subject to the provisions of Chapter 126 of the General Statutes. The staff complement shall be established by the Board on recommendation of the President to insure that there are persons on the staff who have the professional competence and experience to carry out the duties assigned and to insure that there are persons on the staff who are familiar with the problems and capabilities of all of the principal types of institutions represented in the system. Subject to approval by the Board, the President may establish and abolish employment positions within the staff complement authorized by this subsection in the manner of and under the conditions prescribed by G.S. 116-30.4 for special responsibility constituent institutions.

(b1) **(Effective until July 1, 2007)** The President shall receive General Fund appropriations made by the General Assembly for continuing operations of The University of North Carolina that are administered by the President and the President's staff complement established pursuant to G.S. 116-14(b) in the form of a single sum to Budget Code 16010 of The University of North Carolina in the manner and under the conditions prescribed by G.S. 116-30.2. The President, with respect to the foregoing appropriations, shall have the same duties and responsibilities that are prescribed by G.S. 116-30.2 for the Chancellor of a special responsibility constituent institution. The President may establish procedures for transferring funds from Budget Code 16010 to the constituent institutions for nonrecurring expenditures. The President may identify funds for capital improvement projects from Budget Code 16010, and the capital improvement projects may be established following the procedures set out in G.S. 143-18.1.

(b1) **(Effective July 1, 2007)** The President shall receive General Fund appropriations made by the General Assembly for continuing operations of The

G.S. 116-14(b1) is set out twice. See notes.

University of North Carolina that are administered by the President and the President's staff complement established pursuant to G.S. 116-14(b) in the form of a single sum to Budget Code 16011 of The University of North Carolina in the manner and under the conditions prescribed by G.S. 116-30.2. The President, with respect to the foregoing appropriations, shall have the same duties and responsibilities that are prescribed by G.S. 116-30.2 for the Chancellor of a special responsibility constituent institution. The President may establish procedures for transferring funds from Budget Code 16011 to the constituent institutions for nonrecurring expenditures. The President may identify funds for capital improvement projects from Budget Code 16011, and the capital improvement projects may be established following the procedures set out in G.S. 143C-8-8 and G.S. 143C-8-9.

(b2) The President, in consultation with the State Auditor and the Director of the Office of State Personnel, shall ascertain that the management staff and internal financial controls are in place and continue in place to successfully administer the additional authority authorized under G.S. 116-14(b1) and G.S. 116-30.3(e). All actions taken by the President pursuant to G.S. 116-14(b1) and G.S. 116-30.3(e) are subject to audit by the State Auditor.

(c) The President, with the approval of the Board, shall appoint an advisory committee composed of representative presidents of the private colleges and universities and may appoint such additional advisory committees as are deemed necessary or desirable. (1971, c. 1244, s. 1; 1999-237, s. 10.14(b); 2000-140, s. 26; 2006-203, s. 41.)

Subsection (b1) Set Out Twice. — The first version of subsection (b1) set out above is effective until July 1, 2007. The second version of subsection (b1) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 41, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (b1), substituted "Budget Code 16011" for "Budget Code 16010" twice, and substituted "G.S. 143C-8-8 and G.S. 143C-8-9" for "G.S. 143-18.1" at the end.

§ 116-17. (Effective until July 1, 2007) Purchase of annuity or retirement income contracts for faculty members, officers and employees.

Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees of universities, colleges and institutions of higher learning as named and set forth in this Article, and other State agencies qualified as educational institutions under section 501(c)(3) of the United States Internal Revenue Code, the governing boards of any such universities, colleges and institutions of higher learning may authorize the business officer or agent of same to enter into annual contracts with any of the faculty members, administrative officers and employees of said institutions of higher learning which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the faculty member, administrative officer or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said faculty member, administrative officer or employee of said universities, colleges and institutions of higher learning. A faculty member, administrative officer or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the faculty member, administrative officer or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the various governing boards of the various institutions of higher learning and on forms prepared by said governing boards. Notwithstanding any other provision of this section or law, the amount by which the salary of any faculty member, administrative officer or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes.

In lieu of the annuity and related contracts provided for under this section, interests in custodial accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal Revenue Code of 1986 as amended may be purchased for the benefit of qualified employees under this section with the funds derived from the reduction in the salaries of such employees. (1965, c. 365; 1971, c. 1244, s. 3; 1989, c. 526, s. 3.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-17.

§ 116-17. (Effective July 1, 2007) Purchase of annuity or retirement income contracts for faculty members, officers and employees.

Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees of universities, colleges, constituent institutions, and other institutions of higher learning as named and set forth in this Article, and other State agencies qualified as educational institutions under section 501(c)(3) of the United States Internal Revenue Code, the governing boards of any such universities, colleges, constituent institutions, and other institutions of higher learning may authorize the business officer or agent of same to enter into annual contracts with any of the faculty members, administrative officers and employees of said institutions which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the faculty member, administrative officer or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said faculty member, administrative officer or employee of said universities, colleges and institutions. A faculty member, administrative officer or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the faculty member, administrative officer or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the various governing boards of the various institutions and on forms prepared by said governing boards. Notwithstanding

G.S. 116-17 is set out twice. See notes.

any other provision of this section or law, the amount by which the salary of any faculty member, administrative officer or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes.

In lieu of the annuity and related contracts provided for under this section, interests in custodial accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal Revenue Code of 1986 as amended may be purchased for the benefit of qualified employees under this section with the funds derived from the reduction in the salaries of such employees. (1965, c. 365; 1971, c. 1244, s. 3; 1989, c. 526, s. 3; 2006-66, s. 9.11(d).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-17.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11(d), effective July 1, 2007, in the first paragraph, substituted "colleges, constituent institutions" for "colleges" twice, added "other" preceding "institutions of higher learning" twice, and deleted "of higher learning" following "employees of said institutions" near the end, in the second sentence, substituted "institutions" for "institutions of higher learning," and deleted "of higher learning" following "boards of the various institutions" in the next-to-last sentence.

§ 116-19. Contracts with private institutions to aid North Carolina students and licensure students; reporting requirement.

(a) In order to encourage and assist private institutions to continue to educate North Carolina students and licensure students, the State Education Assistance Authority may enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students and licensure students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the State Education Assistance Authority would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student and licensure student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the State Education Assistance Authority to an institution on certification of the institution showing the number of North Carolina students and licensure students enrolled at the institution as of October 1 of any year for which funds may be appropriated. For purposes of this subsection, "needy North Carolina students and licensure students" are those eligible students and licensure students who have financial need as determined by the institution under the institutional methodology or the federal methodology as defined by the State Education Assistance Authority. For purposes of this subsection, "institutional methodology" means a need-analysis formula, developed by College Scholarship Service, that determines the student's or licensure student's and his or her family's capacity to pay for postsecondary education each year.

(b) The State Education Assistance Authority shall document the number of full-time equivalent North Carolina undergraduate students and full-time and less than full-time licensure students that are enrolled in off-campus programs and the State funds collected by each institution pursuant to G.S. 116-19 for those students. The State Education Assistance Authority shall also document the number of scholarships and the amount of the scholarships that are awarded under G.S. 116-19 to students and licensure students enrolled in off-campus programs. An "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

The State Education Assistance Authority shall include in its annual report to the Joint Legislative Education Oversight Committee the information it has compiled and its findings regarding this program. (1971, c. 744, s. 1; c. 1244, s. 5; 1993, c. 321, s. 80(d); 2001-424, s. 31.1(b); 2002-69, s. 1; 2006-66, s. 9.13(a).)

Editor's Note. — Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.13(a), effective July 1, 2006, substituted "students and licensure students" for "students" in the catchline and throughout the section; added "and licensure students" following "students" throughout the section; and substituted "or licensure student's and his or her" for "and" in the last sentence of subsection (a).

§ 116-20. Scholarship and contract terms; base period.

In order to encourage and assist private institutions to educate additional numbers of North Carolinians, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts within the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students and licensure students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student and licensure student enrolled as of October 1 of any year for which appropriated funds may be available, over and above the number of North Carolina students enrolled in that institution as of October 1, 1997, which shall be the base date for the purpose of this calculation. Funds appropriated pursuant to this section shall be paid by the State Education Assistance Authority to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina students and licensure students enrolled at the institution as of October 1 of any year for which funds may be appropriated over the number enrolled on the base date. In the event funds are appropriated for expenditure pursuant to this section and funds are also appropriated, for the same fiscal year, for expenditure pursuant to G.S. 116-19, students and licensure students who are enrolled at an institution in excess of the number enrolled on the base date may be counted under this section for the purpose of calculating the amount to be paid to the institution, but the same students and licensure students may also be counted under G.S. 116-19, for the purpose of calculating payment to be made under that section. (1971, c. 744, s. 2; c. 1244, s. 5; 1998-212, s. 11.10; 2006-66, s. 9.13(b).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.13(b), effective July 1, 2006, added "and licensure students" following "student" and "students" throughout the section.

§ 116-21.1. Financial aid for North Carolina students and licensure students attending private institutions of higher education in North Carolina.

(a) Funds shall be appropriated each fiscal year in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina for aid to institutions and shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22.

(b) The funds appropriated in compliance with this section shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in the account shall be provided as scholarship funds for needy North Carolina students and licensure students during the fiscal year. Each student and licensure student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be available for the tuition grant program as defined in G.S. 116-21.2. (2001-424, s. 31.1(a); 2006-66, s. 9.13(c).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.13(c), effective July 1, 2006, inserted "and licensure students" following "students" in the section catchline; and following "students" and "student," respectively, in subsection (b).

§ 116-21.2. Legislative tuition grants to aid students and licensure students attending private institutions of higher education.

(a) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to institutions, or to persons attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, to be determined by the General Assembly for each academic year which shall be distributed to the full-time undergraduate student as provided by this subsection.

(a1) The legislative tuition grant provided by this section shall also be granted to each full-time licensure student who is enrolled in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant provided by this section shall be awarded on a pro rata basis to any licensure student who is enrolled less than full-time in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant and prorated legislative tuition grant authorized under this subsection shall be paid for undergraduate courses only.

(b) The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student or licensure student applying for the grant is eligible. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times as it prescribes the grant to the approved institution on behalf, and to the credit, of the student or licensure student.

(c) Except as provided in subsection (a1) of this section, in the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If a licensure student on whose behalf a prorated grant has been paid in accordance with subsection (a1) of this section is not enrolled in the undergraduate class as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and licensure students and credited grants paid on behalf of them.

(d) In the event there are not sufficient funds to provide each eligible student or licensure student with a full grant as provided by subsection (a) of this section or a full or a prorated grant as provided by subsection (a1) of this section:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a), (a1), and (b) of this section; and

(2) Each eligible student and licensure student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Any remaining funds shall revert to the General Fund. (2001-424, s. 31.1(a); 2006-66, s. 9.13(d).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.13(d), effective July 1, 2006, inserted "and licensure students" in the section catchline; in subsection (a), substituted "persons" for "students," and inserted "full-time undergraduate" preceding "student as provided by this subsection"; added subsection (a1); in subsection (b), inserted "or licensure student" preceding "applying for the grant is" and substituted "eligible" for "an eligible student" thereafter in the second sentence and "student or licensure student" for "student" in the last sentence; and rewrote subsections (c) and (d).

§ 116-21.3. Legislative tuition grant limitations.

(a) For purposes of this section, an "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

(b) No legislative tuition grant funds shall be expended for a program at an off-campus site of a private institution, as defined in G.S. 116-22(1), established after May 15, 1987, unless (i) the private institution offering the program has previously notified and secured agreement from other private institutions operating degree programs in the county in which the off-campus program is located or operating in the counties adjacent to that county or (ii) the degree program is neither available nor planned in the county with the off-campus site or in the counties adjacent to that county.

(c) Any member of the armed services, as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes, as defined under G.S. 116-143.1, is eligible for a legislative tuition grant pursuant to this section if the member is enrolled as a full-time undergraduate student or as a licensure student. The member's legislative tuition grant shall not exceed the cost of tuition less any tuition assistance paid by the member's employer.

(d) A legislative tuition grant authorized under G.S. 116-21.2(a) shall be reduced by twenty-five percent (25%) for any individual student who has completed 140 semester credit hours or the equivalent of 140 semester credit hours. (2001-424, s. 31.1(a); 2006-66, s. 9.13(e).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.13(e), effective July 1, 2006, substituted "undergraduate student or as a licensure student" for "student" in the first sentence of subsection (c); and substituted "G.S. 116-21.2(a)" for "G.S. 116-21.2" in subsection (d).

§ 116-21.4. Limitations on expenditures.

(a) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 may be used only for secular educational purposes at nonprofit institutions of higher learning that meet the qualifications set out in G.S. 116-22.

(b) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 shall not be used for any student or licensure student who:

(1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or

(2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years. (2001-424, s. 31.1(a); 2002-126, s. 9.6; 2006-66, s. 9.13(f).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.13(f), effective July 1, 2006, inserted "or licensure student" in subsection (b).

§ 116-22. Definitions applicable to §§ 116-19 to 116-22.

As used in G.S. 116-19 through 116-22:

(1) "Institution" shall mean an educational institution with a main permanent campus located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof that satisfies all of the following:

a. Is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of the Association or by the New England Association of Schools and Colleges through its Commission on Institutions of Higher Education.

b. Awards a postsecondary degree as defined in G.S. 116-15.

c. Is not a seminary, Bible school, Bible college or similar religious institution.

(1a) "Licensure student" shall mean a person who:

a. Has a bachelors degree;

b. Is enrolled either full-time or less than full-time in a program intended to result in licensure in teaching or nursing;

c. Attends an institution located in the State; and

d. Qualifies as a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of The University of North Carolina and published in the residency manual of the Board.

(1b) "Main permanent campus" shall mean a campus owned by the institution that provides permanent on-premises housing, food services, and classrooms with full-time faculty members and administration that engages in postsecondary degree activity as defined in G.S. 116-15.

(2) "Student" shall mean a person enrolled in and attending an institution located in the State who qualifies as a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of the University of North Carolina and published in the residency manual of said Board; and a person who has not received a bachelor's degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Governors of the University of North Carolina may promulgate. The enrollment figures required by G.S. 116-19 through 116-22 shall be the number of full-time equivalent students as computed under regulations prescribed by the Board of Governors of the University of North Carolina. Qualification for in-State tuition under G.S. 116-143.3 makes a person a "student" as defined in this subdivision. (1971, c. 744, s. 4; c. 1244, s. 5; 1983 (Reg. Sess., 1984), c. 1034, s. 59; 1987, c. 830, s. 93(d); 2002-126, s. 9.11(a); 2002-159, s. 38; 2006-66, s. 9.13(g).)

Editor's Note. —
Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.13(g), effective July 1, 2006, added subdivision (1b).

Part 2A. Fiscal Accountability and Flexibility.

§ 116-30.01: Recodified as G.S. 115C-296.4 by Session Laws 2006-66, s. 9.17(c), effective January 1, 2007.

Editor's Note. —
Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 116-30.2. (Effective until July 1, 2007) Appropriations to special responsibility constituent institutions and to the North Carolina School of Science and Mathematics.

(a) All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8), each special responsibility constituent institution may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the

G.S. 116-30.2 is set out twice. See notes

Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. Special responsibility constituent institutions may transfer appropriations between budget codes. These transfers shall be considered certified even if as a result of agreements between special responsibility constituent institutions. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions.

(b) The North Carolina School of Science and Mathematics is authorized to be designated as a special responsibility constituent institution for the purposes of G.S. 116-30.1, G.S. 116-30.3, G.S. 116-30.4, G.S. 116-30.5, G.S. 116-30.6, and G.S. 116-31.10. In addition, all General Fund appropriations made by the General Assembly for continuing operations of the North Carolina School of Science and Mathematics shall be made in the form of a single sum to each budget code of the School for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8), the North Carolina School of Science and Mathematics may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Director of the School to be calculated to maintain and advance the programs and services of the School, consistent with the directives and policies of the Board of Trustees of the North Carolina School of Science and Mathematics. The preparation, presentation, and review of General Fund budget requests of the North Carolina School of Science and Mathematics shall be conducted in the same manner as are requests of the constituent institutions. The quarterly allotment procedure established under G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of the North Carolina School of Science and Mathematics. All General Fund monies so appropriated to the North Carolina School of Science and Mathematics shall be recorded, reported, and audited in the same manner as are General Fund appropriations to constituent institutions of The University of North Carolina. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(c); 1996, 2nd Ex. Sess., c. 18, s. 7.4(i); 1997-443, s. 10.8; 2001-449, s. 1; 2004-124, s. 9.6; 2006-66, s. 9.8.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-30.2.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 9.8, effective July 1, 2006, inserted the third and fourth sentences in subsection (a).

§ 116-30.2. (Effective July 1, 2007) Appropriations to special responsibility constituent institutions.

(a) All General Fund appropriations made by the General Assembly for

G.S. 116-30.2 is set out twice. See notes.

continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143C-6-4 and G.S.120-76(8), each special responsibility constituent institution may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. Special responsibility constituent institutions may transfer appropriations between budget codes. These transfers shall be considered certified even if as a result of agreements between special responsibility constituent institutions. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143C-6-3 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions.

(b) Repealed by Session Laws 2006-66, s. 9.11(f), effective July 1, 2007. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(c); 1996, 2nd Ex. Sess., c. 18, s. 7.4(i); 1997-443, s. 10.8; 2001-449, s. 1; 2004-124, s. 9.6; 2006-66, ss. 9.8, 9.11(e), (f); 2006-203, s. 42.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-30.2.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-66, s. 9.8, effective July 1, 2006, added the third and fourth sentences in subsection (a).

Session Laws 2006-66, s. 9.11(e), (f), effective July 1, 2007, deleted "and to the North Carolina School of Science and Mathematics" following "institutions" in the section catchline; and repealed former subsection (b).

Session Laws 2006-203, s. 42, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the subsection (a) designation; substituted "G.S. 143C-6-4 and G.S. 120-76(8)" for "G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8)" in the second sentence; and substituted "G.S. 143C-6-3" for "G.S. 143-17" in the next-to-last sentence.

§ 116-30.3. (Effective until July 1, 2007) Reversions.

(a) Of the General Fund current operations appropriations credit balance remaining at the end of each fiscal year in each budget code of a special responsibility constituent institution, except for the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount of the General Fund appropriation for that fiscal year may be carried forward by the institution to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. Of the General Fund current operations appropriations credit balance remaining in the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount of the General

Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143-25, shall establish the General Fund current operations credit balance remaining in each budget code of each institution.

(b) Repealed by Session Laws 1998-212, s. 11(b), effective July 1, 1999.

(c) Repealed by Session Laws 1998-212, s. 11(a), effective July 1, 1998.

(d) Repealed by Session Laws 1998-212, s. 11(b), effective July 1, 1999.

(e) Notwithstanding G.S. 143-18, of the General Fund current operations appropriations credit balance remaining in Budget Code 16010 of the Office of General Administration of The University of North Carolina, any amount of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this subsection shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143-25, shall establish the General Fund current operations credit balance remaining in Budget Code 16010 of the Office of General Administration of The University of North Carolina. The funds shall not be used to support positions. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1995, c. 507, s. 15.16; 1997-443, s. 10.19; 1998-212, s. 11(a), (b); 1999-237, s. 10.14(a).)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-30.3.

§ 116-30.3. (Effective July 1, 2007) Reversions.

(a) Of the General Fund current operations appropriations credit balance remaining at the end of each fiscal year in each budget code of a special responsibility constituent institution, except for the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount of the General Fund appropriation for that fiscal year may be carried forward by the institution to the next fiscal year and is appropriated for one-time expenditures that will not impose additional financial obligations on the State. Of the General Fund current operations appropriations credit balance remaining in the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and is appropriated for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143C-6-2 shall establish the General Fund current operations credit balance remaining in each budget code of each institution.

(b) Repealed by Session Laws 1998-212, s. 11(b).

(c) Repealed by Session Laws 1998-212, s. 11(a).

(d) Repealed by Session Laws 1998-212, s. 11(b).

(e) Notwithstanding G.S. 143C-1-2 of the General Fund current operations appropriations credit balance remaining in Budget Code 16010 of the Office of General Administration of The University of North Carolina, any amount of

G.S. 116-30.3 is set out twice. See notes.

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the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and is appropriated for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this subsection shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143C-6-2, shall establish the General Fund current operations credit balance remaining in Budget Code 16010 of the Office of General Administration of The University of North Carolina. The funds shall not be used to support positions. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1995, c. 507, s. 15.16; 1997-443, s. 10.19; 1998-212, s. 11(a), (b); 1999-237, s. 10.14(a); 2006-203, s. 43.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-30.3.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 43, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "is appropriated" for "may be used" throughout the section; substituted "G.S. 143C-6-2" for "G.S. 143-25 " in the last sentence of subsection (a) and the next-to-last sentence of subsection (e); and substituted "G.S. 143C-1-2" for "G.S. 143-18" near the beginning of subsection (e).

§ 116-30.3A. (Effective July 1, 2007) Availability of excess receipts.

Notwithstanding the provisions of Chapter 143C of the General Statutes, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations to support the operations generating the receipts as approved by the Director of the Budget. Notwithstanding the provisions of Chapter 143C of the General Statutes, receipts within The University of North Carolina Health Care System realized in excess of budgeted levels shall be available above budgeted levels, for each Budget Code, in addition to appropriations to support the operations generating the receipts as approved by the Director of the Budget. (2006-203, s. 4.)

Editor's Note. — Session Laws 2006-203, s. 126, makes this section effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and to each subsequent biennium thereafter. Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Part 3. Constituent Institutions.

§ 116-31. Membership of the boards of trustees.

(a) All persons who, as of June 30, 1972, are serving as trustees of the regional universities and of the North Carolina School of the Arts, except those who may have been elected to the Board of Governors, shall continue to serve for one year beginning July 1, 1972, and the terms of all such trustees shall continue for the period of one year.

(b) Effective July 1, 1972, a separate board of trustees shall be created for each of the following institutions: North Carolina State University at Raleigh, the University of North Carolina at Asheville, the University of North Carolina at Chapel Hill, the University of North Carolina at Charlotte, the University of North Carolina at Greensboro, and the University of North Carolina at Wilmington. For the period commencing July 1, 1972, and ending June 30, 1973, each such board shall be constituted as follows:

(1) Twelve or more persons elected prior to July 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina, and

(2) The president of the student government of the institution, ex officio.

(c) If any vacancy should occur in any board of trustees during the year beginning July 1, 1972, the Governor may appoint a person to serve for the balance of the year.

(d) **(Effective until July 1, 2007)** Effective July 1, 1973, each of the 16 constituent institutions shall have board of trustees composed of 13 persons chosen as follows:

(1) Eight elected by the Board of Governors,

(2) Four appointed by the Governor, and

(3) The president of the student government ex officio.

(d) **(Effective July 1, 2007)** Except as provided in G.S. 116-65, effective July 1, 1973, each of the 16 institutions of higher education set out in G.S. 116-2(4) shall have board of trustees composed of 13 persons chosen as follows:

(1) Eight elected by the Board of Governors,

(2) Four appointed by the Governor, and

(3) The president of the student government ex officio.

The Board of Trustees of the North Carolina School of Science and Mathematics shall be established in accordance with G.S. 116-233.

(e) From and after July 1, 1973, the term of office of all trustees, except the ex officio member, shall be four years, commencing on July 1 of odd-numbered years. In every odd-numbered year the Board of Governors shall elect four persons to each board of trustees and the Governor shall appoint two persons to each such board.

(f) In electing boards of trustees to serve commencing July 1, 1973, the Board of Governors shall designate four persons for four-year terms and four for two-year terms. The Governor, in making appointments of trustees to serve commencing July 1, 1973, shall designate two persons for four-year terms and two for two-year terms.

(g) From and after July 1, 1973, any person who has served two full four-year terms in succession as a member of a board of trustees shall, for a period of one year, be ineligible for election or appointment to the same board but may be elected or appointed to the board of another institution.

(h) From and after July 1, 1973, no member of the General Assembly or officer or employee of the State or of any constituent institution or spouse of any such member, officer or employee shall be eligible for election or appointment as a trustee. Any trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes such officer or employee shall be deemed thereupon to resign from his membership on the board of trustees.

(i) No person may serve simultaneously as a member of a board of trustees and as a member of the Board of Governors. Any trustee who is elected or appointed to the Board of Governors shall be deemed to resign as a trustee effective as of the date that his term commences as a member of the Board of Governors.

(j) From and after July 1, 1973, whenever any vacancy shall occur in the membership of a board of trustees among those appointed by the Governor, it shall be the duty of the secretary of the board to inform the Governor of the existence of such vacancy, and the Governor shall appoint a person to fill the unexpired term, and whenever any vacancy shall occur among those elected by the Board of Governors, it shall be the duty of the secretary of the board to inform the Board of Governors of the existence of the vacancy, and the Board of Governors shall elect a person to fill the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for three successive regular meetings of a board of trustees, his place as a member shall be deemed vacant. (1971, c. 1244, s. 1; 2006-66, s. 9.11(g).)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 2007. The second version of subsection (d) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11(g), effective July 1, 2007, rewrote subsection (d).

§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of two million dollars ($2,000,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(4) Use existing plans and specifications for construction projects, where feasible. Prior to designing a project, the Board shall consult with the Department of Administration on the availability of existing plans and specifications and the feasibility of using them for a project.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section.

(e) Notwithstanding any other provision of this Chapter, the Department of Administration shall not be the awarding authority for contracts awarded pursuant to this section.

(f) The Board of Governors shall annually report to the State Building Commission the following:

(1) A list of projects governed by this section.

(2) The estimated cost of each project along with the actual cost.
(3) The name of each person awarded a contract under this section.
(4) Whether the person or business awarded a contract under this section meets the definition of "minority business" or "minority person" as defined in G.S. 143-128.2(g). (1997-412, s. 1; 2001-496, s. 8(a); 2005-300, ss. 1, 2; 2006-217, s. 2.)

Effect of Amendments. — Session Laws 2006-217, s. 2, effective September 1, 2006, and applicable to construction projects on which design is begun after that date, added subdivision (a)(4).

§ 116-35. (Effective until July 1, 2007) Electric power plants, campus school, etc.

Institutions operating electric power plants and distribution systems as of October 30, 1971, are authorized to continue such operation and, after furnishing power to the institution, to sell any excess current to the people of the community at a rate or rates approved by the Utilities Commission. Any net profits derived from the operation, or any proceeds derived from the lease or sale, of such power plants and distribution systems shall be paid into the permanent endowment fund held for the institution as provided for in G.S. 116-36. Institutions operating or authorized to operate, as of October 30, 1971, water or sewer distribution systems, may continue to do so. Each of the institutions now operating a campus laboratory or demonstration school may continue to do so under the presently existing plan of operation, consistent with the appropriations made therefor. The provisions of this section shall not apply to the University Enterprises of the University of North Carolina at Chapel Hill, which shall continue to be governed in all respects as provided in Chapters 634 and 723 of the Session Laws of 1971, G.S. 116-41.1 through 116-41.12, and other applicable legislation. (1971, c. 1244, s. 1.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-35.

§ 116-35. (Effective July 1, 2007) Electric power plants, campus school, etc.

Institutions operating electric power plants and distribution systems as of October 30, 1971, are authorized to continue such operation and, after furnishing power to the institution, to sell any excess current to the people of the community at a rate or rates approved by the Utilities Commission. Any net profits derived from the operation, or any proceeds derived from the lease or sale, of such power plants and distribution systems are appropriated and shall be paid into the permanent endowment fund held for the institution as provided for in G.S. 116-36. Institutions operating or authorized to operate, as of October 30, 1971, water or sewer distribution systems, may continue to do so. Each of the institutions now operating a campus laboratory or demonstration school may continue to do so under the presently existing plan of operation, consistent with the appropriations made therefor. The provisions of this section shall not apply to the University Enterprises of the University of North Carolina at Chapel Hill, which shall continue to be governed in all respects as provided in Chapters 634 and 723 of the Session Laws of 1971, G.S. 116-41.1 through 116-41.12, and other applicable legislation. (1971, c. 1244, s. 1; 2006-203, s. 43.1.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-35.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 43.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added "are appropriated and" following "distribution systems" in the first sentence.

§ 116-36. Endowment fund.

(a) The board of trustees of each constituent institution shall establish and maintain, pursuant to such terms and conditions, uniformly applicable to all constituent institutions, as the Board of Governors of the University of North Carolina may from time to time prescribe, an endowment fund for the constituent institution.

(b) It is not the intent of this section that the proceeds from any endowment fund shall take the place of State appropriations or any part thereof, but it is the intent of this section that those proceeds shall supplement the State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(c) Pursuant to the foregoing subsections and consistent with the powers and duties prescribed in this section, each board of trustees shall appoint an investment board to be known as "The Board of Trustees of the Endowment Fund of ____________" (here shall be inserted the name of the constituent institution).

(d) The trustees of the endowment fund may receive and administer as part of the endowment fund gifts, devises, and bequests and any other property of any kind that may come to them from the Board of Governors of the University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the moneys received from State appropriations and from tuition and fees collected from students and used for the general operation of the institution.

(e) The trustees of the endowment fund shall be responsible for the prudent investment of the fund in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries but in compliance with any lawful condition placed by the donor upon that part of the endowment fund to be invested.

(f) In the process of prudent investment of the fund or to realize the statutory intent of the endowment, the board of trustees of the endowment fund may expend or use interest and principal of gifts, devises, and bequests; provided that, the expense or use would not violate any condition or restriction imposed by the original donor of the property which is to be expended or used. To realize the statutory intent of the endowment fund, the board of trustees of the endowment fund may transfer interest or principal of the endowment fund to the useful possession of the constituent institution; provided that, the transfer would not violate any condition or restriction imposed by the original donor of the property which is the subject of the proposed transfer.

(g) **(Effective until July 1, 2007)** The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging their credit or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters 143 and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Director of the Budget. Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission.

(g) **(Effective July 1, 2007)** The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging their credit or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters 143, 143C, and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Director of the Budget.

(h) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired by the University of North Carolina for the benefit of the University as a whole, or for the joint benefit of any two or more constituent institutions of the University.

(i) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Press.

(i1) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Center for Public Television.

(j) Any gift, devise, or bequest of real or personal property to a constituent institution of the University of North Carolina or to the University of North Carolina or to the University of North Carolina Press or to the University of North Carolina Center for Public Television shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case may be, to the endowment fund of the respective institution or agency.

(k) Whenever any property of an endowment fund authorized by this section is disposed of or otherwise transferred from the endowment fund, any instrument of transfer shall indicate that the donor, grantor, seller, lessor, lender, or transferor, as the case may be, is the board of trustees of the endowment fund.

(*l*) **(Effective July 1, 2007)** The proceeds and funds described by this section are appropriated and may be used only as provided by this section. (1971, c. 1244, s. 1; 1977, c. 506; 1979, c. 649, ss. 2, 3; 1983, c. 717, s. 31; 1985 (Reg. Sess., 1986), c. 955, ss. 28, 29; 2006-203, ss. 44, 44.1.)

Subsection (g) Set Out Twice. — The first version of subsection (g) set out above is effective until July 1, 2007. The second version of subsection (g) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, ss. 44 and 44.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (g), substituted "143, 143C, and 146" for "143 and 146" following "Chapters," and deleted the former last sentence, which read: "Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission"; and added subsection (*l*).

§ 116-36.1. Regulation of institutional trust funds.

(a) The Board is responsible for the custody and management of the trust funds of the University of North Carolina and of each institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the president, to the respective chancellors of the institutions when such delegation is necessary or prudent to enable the institution to function in a proper and expeditious manner.

(b) Trust funds shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For purposes of distribution of investment earnings, all trust funds of an institution shall be deemed a single account.

(c) Moneys deposited with the State Treasurer in trust fund accounts pursuant to this section, and investment earnings thereon, are available for expenditure by each institution without further authorization from the General Assembly.

(d) **(Effective until July 1, 2007)** Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the Executive Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143-18.1.

(d) **(Effective July 1, 2007)** Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

(e) Each institution shall submit such reports or other information concerning its trust fund accounts as may be required by the Director of the Budget.

(f) **(Effective until July 1, 2007)** Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes shall be used to supplement State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(f) **(Effective July 1, 2007)** Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes is appropriated and shall be used to supplement State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs;

(10) **(Effective July 1, 2007)** Moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3.

(h) Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g)(7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally. The available cash balance of funds deposited pursuant to this subsection shall be invested in interest-bearing deposits and investments so that the rate of return equals that realized from the investment of State funds generally.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions. (1977, 2nd Sess., c. 1136, s. 30; 1981, c. 529; 1983, c. 913, s. 19; 1989 (Reg. Sess., 1990), c. 936, s. 1(c); 2005-397, s. 3; 2006-203, s. 45.)

Subsections (d) and (f) Set Out Twice. — The first versions of subsections (d) and (f) set out above are effective until July 1, 2007. The second versions of subsections (d) and (f) set out above are effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 45, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (d), substituted "State Budget Act" for "Executive Budget Act" and substituted "G.S. 143C-8-8 and G.S. 143C-8-9" for "G.S. 143-18.1"; inserted "is appropriated and" following "general institutional purposes" in subsection (f); and added subdivision (g)(10).

§ 116-36.2. Regulation of special funds of individual institutions.

(a) **(Effective until July 1, 2007)** Notwithstanding any provisions of law other than Article 5A of Chapter 147 of the General Statutes, the chancellor of each institution is responsible for the custody and management of the special funds of that institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for.

(a) **(Effective July 1, 2007)** Notwithstanding Chapter 143C or any provisions of law other than Article 5A of Chapter 147 of the General Statutes, the chancellor of each institution is responsible for the custody and management of the special funds of that institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The special funds of individual institutions regulated by this section are appropriated and may be used only as authorized by this section.

(b) As used in this section, "special funds of individual institutions" means:

(1) Moneys received from or for the operation by an institution of its program of intercollegiate athletics;

(2) Moneys held by an institution as fiscal agent for individual students, faculty, staff members, and organizations. (1977, 2nd Sess., c. 1136, s. 31; 1983, c. 913, s. 19; 2006-203, s. 46.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2007. The second version of subsection (a) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 46, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (a), added "Chapter 143C or" following "Notwithstanding", and added the last sentence.

§ 116-36.4. (Effective until July 1, 2007) Vending facilities.

Each institution shall provide to the director of the Budget and the State Auditor such information as they may from time to time require concerning the use of net proceeds from operations of vending facilities for the previous fiscal year under G.S. 116-36.1. Net proceeds may be used only as authorized by the Board of Governors, but this section does not authorize expenditures for purposes not otherwise authorized by law. (1983 (Reg. Sess., 1984), c. 1034, s. 172; 1987, c. 738, s. 233(b); 1993, c. 406, s. 1; 1995, c. 507, s. 15.7.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-36.4.

§ 116-36.4. (Effective July 1, 2007) Vending facilities.

Each institution shall provide to the director of the Budget and the State Auditor such information as they may from time to time require concerning the use of net proceeds from operations of vending facilities for the previous fiscal year under G.S. 116-36.1. Net proceeds are appropriated and may be used only as authorized by the Board of Governors, but this section does not authorize expenditures for purposes not otherwise authorized by law. (1983 (Reg. Sess., 1984), c. 1034, s. 172; 1987, c. 738, s. 233(b); 1993, c. 406, s. 1; 1995, c. 507, s. 15.7; 2006-203, s. 46.1.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-36.4.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 46.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added "are appropriated and" following "Net proceeds" in the last sentence.

§ 116-36.5. (Effective until July 1, 2007) Centennial Campus trust fund; Horace Williams Campus trust fund; Millennial Campuses' trust funds.

(a) All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term "Centennial Campus" is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(b) All moneys received through development of the Horace Williams Campus of the University of North Carolina at Chapel Hill, from whatever source, including the net proceeds from the lease or rental of Horace Williams Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Horace Williams Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Horace Williams Campus and not an exclusive one. For purposes of this section the term "Horace Williams Campus" is defined by G.S. 116-198.33(4a). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(c) All moneys received through development of a Millennial Campus of a constituent institution of The University of North Carolina as defined by G.S. 116-198.33(4b), from whatever source, including the net proceeds from the lease or rental of real property on a Millennial Campus, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of that Millennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Millennial Campus and not an exclusive one. To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section. (1987, c. 790, s. 1; 1998-159, s. 1; 1999-234, s. 1; 2000-177, ss. 1, 2.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-36.5.

§ 116-36.5. (Effective July 1, 2007) Centennial Campus trust fund; Horace Williams Campus trust fund; Millennial Campuses' trust funds.

(a) All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1, and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes. This fund shall be deemed an additional and alternative method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term "Centennial Campus" is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(b) All moneys received through development of the Horace Williams Campus of the University of North Carolina at Chapel Hill, from whatever source, including the net proceeds from the lease or rental of Horace Williams Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Horace Williams Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1, and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes. This fund shall be deemed an additional and alternative method of funding the Horace Williams Campus and not an exclusive one. For purposes of this section the term "Horace Williams Campus" is defined by G.S. 116-198.33(4a). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(c) All moneys received through development of a Millennial Campus of a constituent institution of The University of North Carolina as defined by G.S. 116-198.33(4b), from whatever source, including the net proceeds from the lease or rental of real property on a Millennial Campus, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of that Millennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1, and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes. This fund shall be deemed an additional and alternative method of funding the Millennial Campus and not an exclusive one. To the

G.S. 116-36.5 is set out twice. See notes.

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extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(d) The moneys described by this section are appropriated and may be used only as provided by this section. (1987, c. 790, s. 1; 1998-159, s. 1; 1999-234, s. 1; 2000-177, ss. 1, 2; 2006-203, s. 47.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-36.5.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: 'Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 47, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added "and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes" at the end of the second sentences of subsections (a) through (c); and added subsection (d).

§ 116-36.6. (Effective until July 1, 2007) Brody School of Medicine at East Carolina University; Medicare receipts.

The Brody School of Medicine at East Carolina University shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds shall be allocated as follows:

(1) The portion of the Medicare reimbursement generated through the effort and expense of the Brody School of Medicine's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.

(2), Repealed by Session Laws 2005-276, s. 9.26(a), effective July 1, 2005.

(2a) Funds that were received pursuant to this section prior to July 1, 2005, and that were transferred to a special fund account on deposit with the State Treasurer are appropriated to the Brody School of Medicine at East Carolina University and may be expended by the Brody School of Medicine for the family medicine center and for purposes consistent with its stated mission.

(3) Repealed by Session Laws 2005-276, s. 9.26(a), effective July 1, 2005. (1995, c. 507, s. 15.4; 2005-276, s. 9.26(a).)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-36.6.

§ 116-36.6. (Effective July 1, 2007) East Carolina University School of Medicine; Medicare receipts.

The East Carolina University School of Medicine shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds are appropriated and shall be allocated as follows:

(1) The portion of the Medicare reimbursement generated through the effort and expense of the School of Medicine's Medical Faculty

Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.

(2) The funds from this source budgeted by the General Assembly as part of the School of Medicine's General Fund budget code shall be credited to that code as a receipt.

(3) The remainder of the funds shall be transferred to a special fund account on deposit with the State Treasurer. This special fund account shall be used for any necessary repayment of Medicare funds due to final audit settlements for funds allocated under subdivision (2) of this subsection. When the amount of these reimbursement funds has been finalized by audit for each year, those funds remaining in the special fund shall be available for specific capital improvement projects for the East Carolina University School of Medicine. Requests by East Carolina University for use of these funds shall be made to the Board of Governors of The University of North Carolina. Approval of projects by the Board of Governors shall be reported to the Joint Legislative Commission on Governmental Operations, and the reports shall include projected costs and sources of funds for operation of the approved projects. (1995, c. 507, s. 15.4; 2005-276, s. 9.26(a); 2006-203, s. 47.1.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-36.6.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: 'Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 47.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, inserted "are appropriated and" following "these funds" in the second sentence.

§ 116-37. University of North Carolina Health Care System.

(a) Creation of System. —

(1) There is hereby established the University of North Carolina Health Care System, effective November 1, 1998, which shall be governed and administered as an affiliated enterprise of The University of North Carolina in accordance with the provisions of this section, to provide patient care, facilitate the education of physicians and other health care providers, conduct research collaboratively with the health sciences schools of the University of North Carolina at Chapel Hill, and render other services designed to promote the health and well-being of the citizens of North Carolina.

(2) As of November 1, 1998, all of the rights, privileges, liabilities, and obligations of the board of directors of the University of North Carolina Hospitals at Chapel Hill, not inconsistent with the provisions of this section, shall be transferred to and assumed by the board of directors of the University of North Carolina Health Care System.

(3) The University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs established or maintained by the School of Medicine of the University of North Carolina at Chapel Hill

shall be governed by the board of directors of the University of North Carolina Health Care System.

(4) With respect to the provisions of subsections (d), (e), (f), (h), (i), (j), and (k) of this section, the board of directors may adopt policies that make the authorities and responsibilities established by one or more of said subsections separately applicable either to the University of North Carolina Hospitals at Chapel Hill or to the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill, or to both.

(5) To effect an orderly transition, the policies and procedures of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill and of the University of North Carolina Hospitals at Chapel Hill effective as of October 31, 1998, shall remain effective in accordance with their terms until changed by the Board of Directors of the University of North Carolina Health Care System.

(b) Board of Directors. — There is hereby established a board of directors of the University of North Carolina Health Care System, effective November 1, 1998.

(1) The board of directors initially shall be composed as follows:

a. A minimum of six members ex officio of said board shall be the President of The University of North Carolina (or the President's designee); the Chief Executive Officer of the University of North Carolina Health Care System; two administrative officers of the University of North Carolina at Chapel Hill designated by the Chancellor of that institution; and two members of the faculty of the School of Medicine of the University of North Carolina at Chapel Hill designated by the Dean of the School of Medicine; provided, that if not such a member ex officio by virtue of holding one or more of the offices aforementioned, additional ex officio memberships shall be held by the President of the University of North Carolina Hospitals at Chapel Hill and the Dean of the School of Medicine of the University of North Carolina at Chapel Hill, for a total potential ex officio membership of eight.

b. No less than nine and no more than 21 members at large, which number shall be determined by the board of directors, shall be appointed for four-year terms, commencing on November 1 of the year of appointment; provided, that the initial class of at-large members shall include the persons who hold the appointed memberships on the board of directors of the University of North Carolina Hospitals at Chapel Hill incumbent as of October 31, 1998, with their terms of membership on the board of directors of the University of North Carolina Health Care System to expire on the last day of October of the year in which their term as a member of the board of directors of the University of North Carolina Hospitals at Chapel Hill would have expired. Vacant at-large positions shall be filled by the appointment of persons from the business and professional public at large who have special competence in business management, hospital administration, health care delivery, or medical practice or who otherwise have demonstrated dedication to the improvement of health care in North Carolina, and who are neither members of the Board of Governors, members of the board of trustees of a constituent institution of The University of North Carolina, nor officers or employees of the State. Members shall be appointed by the President of the University, and ratified by the Board of Governors, from among a slate of nominations made by the board of directors of the University of North Carolina Health Care System, said slate to include at least twice as many nominees as there are vacant positions to be filled. No member may be appointed to more than two full four-year terms in succession; provided, that persons holding appointed memberships on November 1, 1998, by virtue of their previous membership on the board of directors of the University of North Carolina Hospitals at Chapel Hill, shall not be eligible, for a period of one year following expiration of their term, to be reappointed to the board of directors of the University of North Carolina Health Care System. Any vacancy in an unexpired term shall be filled by an appointment made by the President, and ratified by the Board of Governors, upon the nomination of the board of directors, for the balance of the term remaining.

(2) The board of directors, with each ex officio and at-large member having a vote, shall elect a chairman from among the at-large members, for a term of two years; no person shall be eligible to serve as chairman for more than three terms in succession.

(3) The board of directors of the University of North Carolina Health Care System shall meet at least every 60 days and may hold special meetings at any time and place within the State at the call of the chairman. Board members, other than ex officio members, shall receive the same per diem and reimbursement for travel expenses as members of the State boards and commissions generally.

(4) In meeting the patient-care, educational, research, and public-service goals of the University of North Carolina Health Care System, the board of directors is authorized to exercise such authority and responsibility and adopt such policies, rules, and regulations as it deems necessary and appropriate, not inconsistent with the provisions of this section or the policies of the Board of Governors. The board may authorize any component of the University of North Carolina Health Care System, including the University of North Carolina Hospitals at Chapel Hill, to contract in its individual capacity, subject to such policies and procedures as the board of directors may direct. The board of directors may enter into formal agreements with the University of North Carolina at Chapel Hill with respect to the provision of clinical experience for students and for the provision of maintenance and supporting services. The board's action on matters within its jurisdiction is final, except that appeals may be made, in writing, to the Board of Governors with a copy of the appeal to the Chancellor of the University of North Carolina at Chapel Hill. The board of directors shall keep the Board of Governors and the board of trustees of the University of North Carolina at Chapel Hill fully informed about health care policy and recommend changes necessary to maintain adequate health care delivery, education, and research for improvement of the health of the citizens of North Carolina.

(c) Officers. —

(1) The executive and administrative head of the University of North Carolina Health Care System shall have the title of "Chief Executive Officer." The board of directors, in cooperation with the board of trustees and the Chancellor of the University of North Carolina at Chapel Hill, following such search process as the boards and the Chancellor deem appropriate, shall identify, in cooperation with the Chancellor, two or more persons as candidates for the office, who,

pursuant to criteria agreed upon by the boards and the Chancellor, have the qualifications for both the positions of Chief Executive Officer and Vice-Chancellor for Medical Affairs of the University of North Carolina at Chapel Hill. The names of the candidates so identified shall be forwarded by the Chancellor to the President of The University of North Carolina, who if satisfied with the quality of one or more of the candidates, will nominate one as Chief Executive Officer, subject to selection by the Board of Governors. The Chief Executive Officer shall have complete executive and administrative authority to formulate proposals for, recommend the adoption of, and implement policies governing the programs and activities of the University of North Carolina Health Care System, subject to all requirements of the board of directors.

(2) The executive and administrative head of the University of North Carolina Hospitals at Chapel Hill shall have the title of "President of the University of North Carolina Hospitals at Chapel Hill."

(3) The board of directors shall elect, on nomination of the Chief Executive Officer, the President of the University of North Carolina Hospitals at Chapel Hill, and such additional administrative and professional staff employees as may be deemed necessary to assist in fulfilling the duties of the office of the Chief Executive Officer, all of whom shall serve at the pleasure of the Chief Executive Officer.

(d) Personnel. — Employees of the University of North Carolina Health Care System shall be deemed to be employees of the State and shall be subject to all provisions of State law relevant thereto; provided, however, that except as to the provisions of Articles 5, 6, 7, and 14 of Chapter 126 of the General Statutes, the provisions of Chapter 126 shall not apply to employees of the University of North Carolina Health Care System, and the policies and procedures governing the terms and conditions of employment of such employees shall be adopted by the board of directors; provided, that with respect to such employees as may be members of the faculty of the University of North Carolina at Chapel Hill, no such policies and procedures may be inconsistent with policies established by, or adopted pursuant to delegation from, the Board of Governors of The University of North Carolina.

(1) The board of directors shall fix or approve the schedules of pay, expense allowances, and other compensation and adopt position classification plans for employees of the University of North Carolina Health Care System.

(2) The board of directors may adopt or provide for rules and regulations concerning, but not limited to, annual leave, sick leave, special leave with full pay or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, working conditions, service awards and incentive award programs, grounds for dismissal, demotion, or discipline, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and effective career employees. However, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall not have his or her compensation reduced as a result of this subdivision. Further, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall be subject to the rules regarding discipline or discharge that were effective on October 31, 1998, and shall not be subject to the rules regarding discipline or discharge adopted after October 31, 1998.

(3) The board of directors may prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the University of North Carolina Health Care System.

(4) The board of directors may establish boards, committees, or councils to conduct hearings upon the appeal of employees who have been suspended, demoted, otherwise disciplined, or discharged, to hear employee grievances, or to undertake any other duties relating to personnel administration that the board of directors may direct.

The board of directors shall submit all initial classification and pay plans and other rules and regulations adopted pursuant to subdivisions (1) through (4) of this subsection to the Office of State Personnel for review upon adoption by the board. Any subsequent changes to these plans, rules, and policies adopted by the board shall be submitted to the Office of State Personnel for review. Any comments by the Office of State Personnel shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(e) **(Effective until July 1, 2007)** Finances. — The University of North Carolina Health Care System shall be subject to the provisions of the Executive Budget Act, except for trust funds as provided in G.S. 116-36.1 and G.S. 116-37.2. The Chief Executive Officer, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. All operating funds of the University of North Carolina Health Care System may be budgeted and disbursed through special fund codes, maintaining separate auditable accounts for the University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the University of North Carolina Health Care System may be deposited directly to the special fund codes, and except for General Fund appropriations, all receipts of the University of North Carolina Hospitals at Chapel Hill may be invested pursuant to G.S. 147-69.2(b3). General Fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose, “Contribution to University of North Carolina Hospitals at Chapel Hill Operations” and be transferable to a special fund operating code as receipts.

(e) **(Effective July 1, 2007)** Finances. — The University of North Carolina Health Care System shall be subject to the provisions of the State Budget Act, except for trust funds as provided in G.S. 116-36.1 and G.S. 116-37.2. The Chief Executive Officer, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. All operating funds of the University of North Carolina Health Care System may be budgeted and disbursed through special fund codes, maintaining separate auditable accounts for the University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the University of North Carolina Health Care System may be deposited directly to the special fund codes, and except for General Fund appropriations, all receipts of the University of North Carolina Hospitals at Chapel Hill may be invested pursuant to G.S. 147-69.2(b3). General Fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose, “Contribution to University of North Carolina Hospitals at Chapel Hill Operations” and be transferable to a special fund operating code as receipts.

(f) Finances — Patient/Health Care System Benefit. — The Chief Executive Officer of the University of North Carolina Health Care System, or the Chief Executive Officer’s designee, may expend operating budget funds, including State funds, of the University of North Carolina Health Care System for the direct benefit of a patient, when, in the judgment of the Chief Executive Officer or the Chief Executive Officer’s designee, the expenditure of these funds would result in a financial benefit to the University of North Carolina Health Care

System. Any such expenditures are declared to result in the provision of medical services and create charges of the University of North Carolina Health Care System for which the health care system may bill and pursue recovery in the same way as allowed by law for recovery of other health care systems' charges for services that are unpaid.

These expenditures shall be limited to no more than seven thousand five hundred dollars ($7,500) per patient per admission and shall be restricted (i) to situations in which a patient is financially unable to afford ambulance or other transportation for discharge; (ii) to afford placement in an after-care facility pending approval of third-party entitlement benefits; (iii) to assure availability of a bed in an after-care facility after discharge from the hospitals; (iv) to secure equipment or other medically appropriate services after discharge; or (v) to pay health insurance premiums. The Chief Executive Officer or the Chief Executive Officer's designee shall reevaluate at least once a month the cost-effectiveness of any continuing payment on behalf of a patient.

To the extent that the University of North Carolina Health Care System advances anticipated government entitlement benefits for a patient's benefit, for which the patient later receives a lump-sum "back-pay" award from an agency of the State, whether for the current admission or subsequent admission, the State agency shall withhold from this back pay an amount equal to the sum advanced on the patient's behalf by the University of North Carolina Health Care System, if, prior to the disbursement of the back pay, the applicable State program has received notice from the University of North Carolina Health Care System of the advancement.

(g) Reports. — The Chief Executive Officer and the President of The University of North Carolina jointly shall report by September 30 of each year on the operations and financial affairs of the University of North Carolina Health Care System to the Joint Legislative Commission on Governmental Operations. The report shall include the actions taken by the board of directors under the authority granted in subsections (d), (h), (i), and (j) of this section.

(h) Purchases. — Notwithstanding the provisions of Articles 3, 3A, and 3C of Chapter 143 of the General Statutes to the contrary, the board of directors shall establish policies and regulations governing the purchasing requirements of the University of North Carolina Health Care System. These policies and regulations shall provide for requests for proposals, competitive bidding, or purchasing by means other than competitive bidding, contract negotiations, and contract awards for purchasing supplies, materials, equipment, and services which are necessary and appropriate to fulfill the clinical, educational, research, and community service missions of the University of North Carolina Health Care System. The board of directors shall submit all initial policies and regulations adopted pursuant to this subsection to the Division of Purchase and Contract for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the Division of Purchase and Contract for review. Any comments by the Division of Purchase and Contract shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(i) Property. — The board of directors shall establish rules and regulations for acquiring or disposing of any interest in real property for the use of the University of North Carolina Health Care System. These rules and regulations shall include provisions for development of specifications, advertisement, and negotiations with owners for acquisition by purchase, gift, lease, or rental, but not by condemnation or exercise of eminent domain, on behalf of the University of North Carolina Health Care System. This section does not authorize the board of directors to encumber real property. The board of directors shall submit all initial policies and regulations adopted pursuant to this subsection to the State Property Office for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina. After review by the Attorney General as to form and after the consummation of any such acquisition, the University of North Carolina Health Care System shall promptly file a report concerning the acquisition or disposition with the Governor and Council of State. Acquisitions and dispositions of any interest in real property pursuant to this section shall not be subject to the provisions of Article 36 of Chapter 143 of the General Statutes or the provisions of Chapter 146 of the General Statutes.

(j) Property — Construction. — Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the board of directors shall adopt policies and procedures with respect to the design, construction, and renovation of buildings, utilities, and other property developments of the University of North Carolina Health Care System requiring the expenditure of public money for:

(1) Conducting the fee negotiations for all design contracts and supervising the letting of all construction and design contracts.
(2) Performing the duties of the Department of Administration, the Office of State Construction, and the State Building Commission under G.S. 133-1.1(d), Article 8 of Chapter 143 of the General Statutes, and G.S. 143-341(3).
(3) Using open-end design agreements.
(4) As appropriate, submitting construction documents for review and approval by the Department of Insurance and the Division of Facility Services of the Department of Health and Human Services.
(5) Using the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

The board of directors shall submit all initial policies and procedures adopted under this subsection to the Office of State Construction for review upon adoption by the board. Any subsequent changes to these policies and procedures adopted by the board shall be submitted to the Office of State Construction for review. Any comments by the Office of State Construction shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(k) Patient Information. — The University of North Carolina Health Care System shall, at the earliest possible opportunity, specifically make a verbal and written request to each patient to disclose the patient's social security number, if any. If the patient does not disclose that number, the University of North Carolina Health Care System shall deny benefits, rights, and privileges of the University of North Carolina Health Care System to the patient as soon as practical, to the maximum extent permitted by federal law or federal regulations. The University of North Carolina Health Care System shall make the disclosure to the patient required by Section 7(b) of P.L. 93-579. This subsection is supplementary to G.S. 105A-3(c). (1971, c. 762, s. 1; c. 1244, s. 6; 1981, c. 859, s. 41.5; 1983, c. 717, s. 32; 1985 (Reg. Sess., 1986), c. 955, ss. 30, 31; 1989, c. 141, s. 1; 1991, c. 550, s. 2; c. 689, s. 206.2(d); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1998-212, s. 11.8(a); 1999-252, s. 4(a); 2005-417, s. 3; 2006-203, s. 47.2.)

Subsection (e) Set Out Twice. — The first version of subsection (e) set out above is effective until July 1, 2007. The second version of subsection (e) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 47.2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act" for "Executive Budget Act" in subsection (e).

Part 3A. Management Flexibility for Special Responsibility Constituent Institutions.

§ 116-40.22. Management flexibility.

(a) Definition. — For purposes of this section, the term "institution" means a special responsibility constituent institution that is granted management flexibility by the Board of Governors in compliance with this Part.

(b) Appoint and Fix Compensation of Senior Personnel. — Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, the Board of Trustees of an institution shall, on recommendation of the Chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers, and any person having permanent tenure at that institution. No later than January 1, 2002, the Board of Governors shall adopt policies, compensation structures, and pay ranges concerning the appointment and compensation of senior personnel appointed by the Board of Trustees pursuant to this section. Compensation for senior personnel fixed by the Board of Trustees pursuant to this section shall be consistent with the compensation structure, policies, and pay ranges set by the Board of Governors.

(c) **(Effective until July 1, 2007)** Tuition and Fees. — Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, in addition to any tuition and fees set by the Board of Governors pursuant to G.S. 116-11(7), the Board of Trustees of the institution may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs at that institution without regard to whether an emergency situation exists and not inconsistent with the actions of the General Assembly. The institution shall retain any tuition and fees set pursuant to this subsection for use by the institution.

(c) **(Effective July 1, 2007)** Tuition and Fees. — Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, in addition to any tuition and fees set by the Board of Governors pursuant to G.S. 116-11(7), the Board of Trustees of the institution may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs at that institution without regard to whether an emergency situation exists and not inconsistent with the actions of the General Assembly. Any tuition and fees set pursuant to this subsection are appropriated for use by the institution. Notwithstanding this subsection, neither the Board of Governors of The University of North Carolina nor its Board of Trustees shall impose any tuition or mandatory fee at the North Carolina School of Science and Mathematics without the approval of the General Assembly.

(d) Information Technology. — Notwithstanding any other provision of law, the Board of Trustees of an institution shall establish policies and rules governing the planning, acquisition, implementation, and delivery of information technology and telecommunications at the institution. These policies and rules shall provide for security and encryption standards; software standards; hardware standards; acquisition of information technology consulting and contract services; disaster recovery standards; and standards for desktop and server computing, telecommunications, networking, video services, personal digital assistants, and other wireless technologies; and other information technology matters that are necessary and appropriate to fulfill the teaching, educational, research, extension, and service missions of the institution. The

Board of Trustees shall submit all initial policies and rules adopted pursuant to this subsection to the Office of Information Technology Services for review upon adoption by the Board of Trustees. Any subsequent changes to these policies and rules adopted by the Board of Trustees shall be submitted to the Office of Information Technology Services for review. Any comments by the Office of Information Technology Services shall be submitted to the Chancellor of that institution. (2001-424, s. 31.11(a); 2006-66, s. 9.11(h); 2006-203, s. 4.1.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 2007. The second version of subsection (c) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-66, s. 9.11(h), effective July 1, 2007, added the last sentence in subsection (c).

Session Laws 2006-203, s. 4.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, rewrote the next-to-last sentence in subsection (c).

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

§ 116-41.4. (Effective until July 1, 2007) Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State; bond anticipation notes.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1969, shall not exceed three million five hundred thousand dollars ($3,500,000); provided, further, the Board shall have authority to issue revenue bonds under this section in an additional aggregate principal amount not to exceed three million five hundred thousand dollars ($3,500,000) during the biennium ending June 30, 1971; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1973, shall not exceed thirteen million dollars ($13,000,000); provided, further, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1975, shall not exceed thirteen million dollars ($13,000,000). The bonds shall be dated, shall mature at such time or times not exceeding 30 years from their date or dates, and shall bear interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity at the option of the Board at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached thereto, and shall fix the denomination or denomina-

G.S. 116-41.4 is set out twice. See notes.

tions of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any bonds issued under the provisions of this Part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the Board under the provisions of this Part, subject to the approval of the Director of the Budget, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Part. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at

G.S. 116-41.4 is set out twice. See notes.

such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer, whose signature or a facsimile of whose signature shall appear on any notes or coupons, shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any notes issued under the provisions of this Part, all such notes shall be deemed to be negotiable instruments under the laws of this State. The notes may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds.

The resolution providing for the issuance of notes or bonds may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Notes may be issued by the Board under the provisions of this Part, subject to the approval of the Director of the Budget, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bond anticipation notes issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such notes shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the notes.

Unless the context shall otherwise indicate, the word "bonds," wherever used in this Part, shall be deemed and construed to include the words "bond anticipation notes."

Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission. (1961, c. 1078, s. 4; 1963, c. 944, s. 2; 1965, c. 1033, s. 2; 1967, c. 724; 1969, c. 1236; 1971, c. 636; c. 1244, s. 15; 1973, c. 663; 1983, c. 577, s. 3; 1985 (Reg. Sess., 1986), c. 955, ss. 32, 33.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-41.4.

§ 116-41.4. (Effective July 1, 2007) Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State; bond anticipation notes.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1969, shall not exceed three million five hundred thousand dollars ($3,500,000); provided, further, the Board shall have authority to issue revenue bonds under this section in an additional aggregate principal amount not to exceed three million five hundred thousand dollars ($3,500,000) during the biennium ending June 30, 1971; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1973, shall not exceed thirteen million dollars ($13,000,000); provided, further, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1975, shall not exceed thirteen million dollars ($13,000,000). The bonds shall be dated, shall mature at such time or times not exceeding 30 years from their date or dates, and shall bear interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity at the option of the Board at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any bonds issued under the provisions of this Part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the Board under the provisions of this Part, subject to the approval of the Director of the Budget, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Part. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer, whose signature or a facsimile of whose signature shall appear on any notes or coupons, shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any notes issued under the provisions of this Part, all such notes shall be deemed to be negotiable instruments under the laws of this State. The notes may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

G.S. 116-41.4 is set out twice. See notes.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds.

The resolution providing for the issuance of notes or bonds may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Notes may be issued by the Board under the provisions of this Part, subject to the approval of the Director of the Budget, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bond anticipation notes issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such notes shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the notes.

Unless the context shall otherwise indicate, the word "bonds," wherever used in this Part, shall be deemed and construed to include the words "bond anticipation notes." (1961, c. 1078, s. 4; 1963, c. 944, s. 2; 1965, c. 1033, s. 2; 1967, c. 724; 1969, c. 1236; 1971, c. 636; c. 1244, s. 15; 1973, c. 663; 1983, c. 577, s. 3; 1985 (Reg. Sess., 1986), c. 955, ss. 32, 33; 2006-203, s. 48.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-41.4.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 48, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last paragraph, which read: "Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission."

§ 116-41.9. (Effective until July 1, 2007) Refunding revenue bonds.

The University is hereby authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding revenue bonds for the purpose of refunding any revenue bonds issued by the University under this Part in connection with any project or projects, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The University is further authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding revenue bonds for the combined purpose of

(1) Refunding any revenue bonds or refunding revenue bonds issued by the University in connection with any project or projects including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of any project or projects.

G.S. 116-41.9 is set out twice. See notes.

The issuance of such refunding revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the University with respect to the same, shall be governed by the foregoing provisions of this Part insofar as the same may be applicable.

Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission. (1961, c. 1078, s. 9; 1983, c. 577, s. 4; 1985 (Reg. Sess., 1986), c. 955, ss. 34, 35.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-41.9.

§ 116-41.9. (Effective July 1, 2007) Refunding revenue bonds.

The University is hereby authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding revenue bonds for the purpose of refunding any revenue bonds issued by the University under this Part in connection with any project or projects, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The University is further authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding revenue bonds for the combined purpose of

(1) Refunding any revenue bonds or refunding revenue bonds issued by the University in connection with any project or projects including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of any project or projects.

The issuance of such refunding revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the University with respect to the same, shall be governed by the foregoing provisions of this Part insofar as the same may be applicable. (1961, c. 1078, s. 9; 1983, c. 577, s. 4; 1985 (Reg. Sess.,1986), c. 955, ss. 34, 35; 2006-203, s. 49.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-41.9.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: 'Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 49, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last paragraph, which read: "Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission."

Part 4A. Distinguished Professors Endowment Trust Fund.

§ 116-41.16. (Effective until July 1, 2007) Distinguished Professors Endowment Trust Fund; contribution commitments.

(a) For constituent institutions other than focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

(1) A commitment to make a donation of at least six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143-31.4, and an initial payment of one hundred eleven thousand dollars ($111,000) to receive a grant described in G.S. 116-41.15(a)(1); or
(2) A commitment to make a donation of at least three hundred thirty-three thousand dollars ($333,000), as prescribed by G.S. 143-31.4, and an initial payment of fifty-five thousand five hundred dollars ($55,500) to receive a grant described in G.S. 116-41.15(a)(2); or
(3) A commitment to make a donation in excess of six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143-31.4, and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(a)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment and shall be made on or before the anniversary date of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair.

(b) For focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:
(1) A commitment to make a donation of at least five hundred thousand dollars ($500,000), as prescribed by G.S. 143-31.4, and an initial payment of eighty-three thousand three hundred dollars ($83,300) to receive a grant described in G.S. 116-41.5(b)(1); or
(2) A commitment to make a donation of at least two hundred fifty thousand dollars ($250,000), as prescribed by G.S. 143-31.4, and an initial payment of forty-one thousand six hundred dollars ($41,600) to receive a grant described in G.S. 116-41.15(b)(2); or
(3) A commitment to make a donation in excess of five hundred thousand dollars ($500,000), as prescribed by G.S. 143-31.4, and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(b)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair. (1985, c. 757, s. 202; 2003-293, s. 3; 2005-276, s. 9.21(b).)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-41.16.

§ 116-41.16. (Effective July 1, 2007) Distinguished Professors Endowment Trust Fund; contribution commitments.

(a) For constituent institutions other than focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:
(1) A commitment to make a donation of at least six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143C-4-5, and an

initial payment of one hundred eleven thousand dollars ($111,000) to receive a grant described in G.S. 116-41.15(a)(1); or

(2) A commitment to make a donation of at least three hundred thirty three thousand dollars ($333,000), as prescribed by G.S. 143C-4-5, and an initial payment of fifty-five thousand five hundred dollars ($55,500) to receive a grant described in G.S. 116-41.15(a)(2); or

(3) A commitment to make a donation in excess of six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143-31.4 [G.S. 143C-4-5], and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(a)(3); and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment and shall be made on or before the anniversary date of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair.

(b) For focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

(1) A commitment to make a donation of at least five hundred thousand dollars ($500,000), as prescribed by G.S. 143C-4-5, and an initial payment of eighty-three thousand three hundred dollars ($83,300) to receive a grant described in G.S. 116-41.5(b)(1); or

(2) A commitment to make a donation of at least two hundred fifty thousand dollars ($250,000), as prescribed by G.S. 143C-4-5, and an initial payment of forty-one thousand six hundred dollars ($41,600) to receive a grant described in G.S. 116-41.15(b)(2); or

(3) A commitment to make a donation in excess of five hundred thousand dollars ($500,000), as prescribed by G.S. 143-31.4 [G.S. 143C-4-5], and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(b)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair. (1985, c. 757, s. 202; 2003-293, s. 3; 2005-276, s. 9.21(b); 2006-203, s. 50.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-41.16.

Editor's Note. — The amendment to this section by Session Laws 2006-203, s. 50, was based on the section as it existed before the 2005 amendment, which added subdivisions (a)(3) and (b)(3). The bracketed references to "G.S. 143C-4-5" have been added in subdivisions (a)(3) and (b)(3) at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 50, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-4-5" for "G.S. 143-31.4" throughout the section.

Part 5. Miscellaneous Provisions.

§ 116-43.15. Use of college or university facilities by public school students pursuant to cooperative programs.

The facilities of any constituent institution of The University of North Carolina and the facilities of any private college or university licensed in accordance with G.S. 116-15 that comply with applicable State, county, and local fire codes for those facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs. (2006-66, s. 8.11(b); 2006-221, s. 5.)

Editor's Note. — Session Laws 2006-221, s. 28, made this section effective July 1, 2006.

Session Laws 2006-66, s. 8.11(b), as added by Session Laws 2006-221, s. 5, effective July 1, 2006, enacted this section as G.S. 116-44.5. It was recodified as G.S. 116-43.15 at the direction of the Revisor of Statutes.

Part 6. Traffic and Parking.

§ 116-44.4. Regulation of traffic and parking and registration of motor vehicles.

(a) Except as otherwise provided in this Part, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of motor vehicles thereon are applicable to all streets, alleys, driveways, parking lots, and parking structures on University property. Nothing in this section modifies any rights of ownership or control of University property, now or hereafter vested in the Board of Governors of the University of North Carolina or the State of North Carolina.

(b) Each board of trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the board of trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the board of trustees. The board of trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this Part.

(c) Each board of trustees may by ordinance provide for the registration of motor vehicles maintained or operated on the campus by any student, faculty member, or employee of the University, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered motor vehicle on the campus when the vehicle is required by the ordinance to be registered.

(d) Each board of trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students, faculty, and employees of the University and members of the general public attending schools, conferences, or meetings at the University, visiting or making use of any University facilities, or attending to official business with the University. The board of trustees may issue permits to park in these lots and garages and may charge a fee therefor. The board of trustees may also by ordinance make it unlawful for any person to park a motor vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle. No permit to park shall be issued until the student requesting the permit provides the name of the insurer, the policy number under which the student has financial responsibility, and the student certifies that the motor vehicle is insured at the levels set in G.S. 20-279.1(11) or higher. This subsection applies to motor vehicles that are registered in other states as well as motor vehicles that are registered in this State pursuant to Chapter 20 of the General Statutes.

(e) Each board of trustees may by ordinance set aside spaces in designated parking areas or facilities in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the board of trustees may install a system of parking meters and make it unlawful for any person to park a motor vehicle in a metered space without activating the meter for the entire time that the vehicle is parked, up to the maximum length of time allowed for that space. The meters may be activated by coins of the United States. The board of trustees may also install automatic gates, employ attendants, and use any other device or procedure to control access to and collect the fees for using its parking areas and facilities.

(f) The board of trustees may by ordinance provide for the issuance of stickers, decals, permits, or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of them.

(g) Violation of an ordinance adopted under any portion of this Part is an infraction as defined in G.S. 14-3.1 and is punishable by a penalty of not more than fifty dollars ($50.00). An ordinance may provide that certain prohibited acts shall not be infractions and in such cases the provisions of subsection (h) may be used to enforce the ordinance.

(h) An ordinance adopted under any portion of this Part may provide that violation subjects the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged. Each board of trustees may establish procedures for the collection of these penalties and they may be enforced by civil action in the nature of debt. The board of trustees may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or upon repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle registration, and termination or suspension of enrollment in or employment by the University.

(i) An ordinance adopted under any portion of this Part may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether a constituent institution does its own removal and disposal of motor vehicles or contracts with another person to do so, the institution shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the institution operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the institution operates in such a way that it is responsible for collecting towing fees, it shall:
   a. Provide by contract or ordinance for a schedule of reasonable towing fees,
   b. Provide a procedure for a prompt fair hearing to contest the towing,
   c. Provide for an appeal to district court from that hearing,
   d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
   e. If the institution chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the

vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the institution may destroy it.

(j) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the board of trustees is prima facie evidence that the vehicle was parked by:

(1) The person holding a University parking permit for the vehicle, or
(2) If no University parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the University pursuant to subsection (c), or
(3) If no University parking permit has been issued for the vehicle and the vehicle is not registered with the University, the person in whose name it is registered with the North Carolina Division of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subsection applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the board of trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

(k) Each board of trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(*l*) All ordinances adopted under this Part shall be recorded in the minutes of the board of trustees and copies thereof shall be filed in the offices of the President of the University of North Carolina and the Secretary of State. Each board of trustees shall provide for printing and distributing copies of its traffic and parking ordinances.

(m) **(Effective until July 1, 2007)** All moneys received pursuant to this Part, except for the clear proceeds of all civil penalties collected pursuant to subsection (h) of this section, shall be placed in a trust account in each constituent institution and may be used for any of the following purposes:

(1) To defray the cost of administering and enforcing ordinances adopted under this Part;
(2) To develop, maintain, and supervise parking areas and facilities;
(3) To provide bus service or other transportation systems and facilities, including payments to any public or private transportation system serving University students, faculty, or employees;
(4) As a pledge to secure revenue bonds for parking facilities issued under Article 21 of this Chapter;
(5) Other purposes related to parking, traffic, and transportation on the campus.

The clear proceeds of all civil penalties collected pursuant to subsection (h) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(m) **(Effective July 1, 2007)** All moneys received pursuant to this Part, except for the clear proceeds of all civil penalties collected pursuant to subsection (h) of this section, shall be placed in a trust account in each constituent institution, are appropriated, and may be used for any of the following purposes:

(1) To defray the cost of administering and enforcing ordinances adopted under this Part;
(2) To develop, maintain, and supervise parking areas and facilities;
(3) To provide bus service or other transportation systems and facilities, including payments to any public or private transportation system serving University students, faculty, or employees;
(4) As a pledge to secure revenue bonds for parking facilities issued under Article 21 of this Chapter;
(5) Other purposes related to parking, traffic, and transportation on the campus. (1973, c. 495, s. 1; 1975, c. 716, s. 5; 1981 (Reg. Sess., 1982), c. 1239, s. 3; 1983, c. 420, s. 5; 1985, c. 764, s. 36; 2001-336, s. 1; 2005-276, s. 6.37(r); 2006-203, s. 51.)

Subsection (m) Set Out Twice. — The first version of subsection (m) set out above is effective until July 1, 2007. The second version of subsection (m) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 51, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "institution, are appropriated" for "institution" in subsection (m).

ARTICLE 4.

North Carolina School of the Arts.

§ 116-68. (Effective until July 1, 2007) Endowment fund.

The Board of Trustees is authorized to establish a permanent endowment fund, and shall perform such duties in relation thereto as are prescribed by the provisions of Article 1, Chapter 116, of the General Statutes. (1963, c. 1116; 1971, c. 1244, s. 13.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-68.

§ 116-68. (Effective July 1, 2007) Endowment fund.

The Board of Trustees is authorized to establish a permanent endowment fund, and shall perform such duties in relation thereto as are prescribed by the provisions of Article 1, Chapter 116, of the General Statutes. The proceeds in this fund are appropriated as provided by G.S. 116-36. (1963, c. 1116; 1971, c. 1244, s. 13; 2006-203, s. 51.1.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-68.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 51.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added the last sentence.

§ 116-69.1. Display of the United States and North Carolina flags and the recitation of the Pledge of Allegiance.

The school shall (i) display the United States and North Carolina flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on a daily basis, and (iii) provide instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. The school shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom. (2006-137, s. 3.)

Editor's Note. — Session Laws 2006-137, s. 3, made this section effective July 19, 2006.

Article 5A.

Center for Advancement of Teaching.

§ 116-74.6. North Carolina Center for the Advancement of Teaching established; powers and duties of trustees.

The Board of Governors of The University of North Carolina established the North Carolina Center for the Advancement of Teaching pursuant to Section 74 of S.L. 1985-479. The Center shall be a center of The University of North Carolina Board of Governors. It shall be the function of the North Carolina Center for the Advancement of Teaching (hereinafter called "NCCAT"), through itself or agencies with which it may contract, to provide career teachers with opportunities to study advanced topics in the sciences, arts, and humanities and to engage in informed discourse, assisted by able mentors and outstanding leaders from all walks of life; and otherwise to offer opportunity for teachers to engage in scholarly pursuits, through a center dedicated exclusively to the advancement of teaching as an art and as a profession.

The Board of Governors of The University of North Carolina shall establish the North Carolina Center for the Advancement of Teaching Board of Trustees and shall delegate to the Board of Trustees all the powers and duties the Board of Governors considers necessary or appropriate for the effective discharge of the functions of NCCAT. (1985, c. 479, s. 74; 2006-66, s. 9.15(a).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.15.(a), effective July 1, 2006, in the first paragraph, rewrote the first sentence, and substituted "The Center shall be a center" for "The Center shall operate under the general auspices" at the beginning of the second sentence.

§ 116-74.7. Composition of board of trustees; terms; officers.

(a) The NCCAT Board of Trustees shall be composed of the following membership:

(1) Three ex officio members: the President of The University of North Carolina, the State Superintendent of Public Instruction, and the Chancellor of Western Carolina University, or their designees;

(2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;

(3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and

(4) Eight members appointed by the Board of Governors, one from each of the eight educational regions.

The appointing authorities shall give consideration to assuring, through Board membership, the statewide mission of NCCAT.

(b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members may serve two consecutive four-year terms. The Board shall elect a new chairman every two years from its membership. The Chairman may serve two consecutive two-year terms as chairman.

(c) The chief administrative officer of NCCAT shall be an executive director. The Board of Governors of The University of North Carolina shall appoint the executive director and set the compensation of the executive director on the recommendation of the President of The University of North Carolina. The President shall recommend the executive director from a list of not fewer than two names nominated by the NCCAT Board of Trustees.

The executive director shall report to and serve at the pleasure of the President of The University of North Carolina; provided that the President shall not terminate the employment of the executive director without prior consultation with the NCCAT Board of Trustees. (1985, c. 479, s. 74; 1995, c. 490, s. 2; 2006-66, s. 9.15(b).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.15.(b), effective July 1, 2006, added "or their designees" at the end of subdivision (a)(1); and redesignated and rewrote the former second paragraph of subsection (b) as present subsection (c).

Article 5C.

North Carolina Principal Fellows Program.

§ 116-74.41. North Carolina Principal Fellows Commission established; membership.

(a) There is established the North Carolina Principal Fellows Commission. The Commission shall exercise its powers and duties independently of the Board of Governors of The University of North Carolina. The Director of the Principal Fellows Program shall staff the Commission. The State Education Assistance Authority (SEAA) as created in G.S. 116-203 shall be responsible for implementing scholarship loan agreements, monitoring, cancelling through service, collecting and otherwise enforcing the agreements for the Principal Fellows Program scholarship loans established in accordance with G.S. 116-74.42.

(a1) **(Effective July 1, 2007)** All funds appropriated to, or otherwise received by, the Principal Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall be placed in an institutional trust fund pursuant to G.S. 116-36.1.

(b) The Commission shall consist of 12 members appointed as follows:

(1) One member of the Board of Governors of The University of North Carolina appointed by the chair of that board, notwithstanding G.S. 116-7(b).

(2) One member of the State Board of Education appointed by the State Board chair.

(3) Two deans of schools of education appointed by the President of The University of North Carolina.

(4) One public school teacher appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(5) One public school principal appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(6) A local superintendent chosen by the State Superintendent of Public Instruction.

(7) One member to represent business and industry appointed by the Governor.

(8) One local school board member appointed by the chair of the State Board of Education.

(9) One parent of a public school child appointed by the State Superintendent of Public Instruction.

(10) The chairperson of the Board of the State Education Assistance Authority.

(11) The director of the Principal Fellows Program. The director shall chair the Commission.

(c) Initial appointments shall be made no later than September 15, 1993. Initial terms of those members appointed to fill the teacher, principal, parent, superintendent, and the local school board member seats shall expire July 1, 1995. Initial terms of those members appointed to fill the Board of Governors of The University of North Carolina, State Board of Education, deans of schools of education, and the member of business and industry seats shall expire July 1, 1997. Thereafter, all appointments for these seats shall be for four-year terms.

(d) Except as otherwise provided, if a vacancy occurs in the membership, the appointing authority shall appoint another person to serve for the balance of the unexpired term. In the discretion of the appointing authority, a State Board of Education member or a member of the Board of Governors of The University of North Carolina may complete a term on the Commission after the member's appointment from the appointing board has expired.

(e) Commission members shall receive per diem, subsistence, and travel allowances in accordance with G.S. 138-5 or G.S. 138- 6, as appropriate.

(f) The Commission shall meet regularly, at times and places deemed necessary by the chair. (1993, c. 321, s. 85(a); 2006-203, s. 51.2.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 51.2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added subsection (a1).

§ 116-74.42. Principal Fellows Program established; administration.

(a) A Principal Fellows Program shall be administered by the North Carolina Principal Fellows Commission in collaboration with the State Education Assistance Authority. The Principal Fellows Program shall provide up to a two-year scholarship loan to selected recipients and shall provide extracurricular enhancement activities for recipients. The North Carolina Principal Fellows Commission shall determine selection criteria, methods of selection, and shall select recipients to receive scholarship loans made under the Principal Fellows Program.

(b) The Board of Governors of The University of North Carolina shall appoint a director of the Principal Fellows Program. The director shall chair and staff the Principal Fellows Commission, and shall administer the extracurricular enhancement activities of the program. The Board of Governors shall provide office space and clerical support staff for the program.

(c) The Principal Fellows Program shall provide a two-year scholarship loan in the amount specified in subsection (c1) of this section to persons who may be eligible to be selected as school administrators in the public schools of the State by completing a full-time program in school administration in an approved program. Approved programs are those chosen by the Commission from among school administrator programs within the State. No more than 200 principal fellow scholarship loan awards shall be made in each year. The final number of scholarship loan awards per year shall be made in accordance with the Board of Governors' findings concerning the supply and demand of administrators, the State's need for school administrator candidates and within funds appropriated for the scholarship loans. Effective September 1, 1995, and in accordance with school administrator training programs established by the Board of Governors of The University of North Carolina, recipients shall be required to complete an approved full-time academic program during the first year of the scholarship loan program and a full-time internship during the second year of the program. In order to attract fellows as interns, local school administrative units may use all or part of the funds allotted for an assistant principal salary for each intern accepted by the local school administrative unit; however, interns shall not serve as assistant principals.

(c1) The scholarship loan shall be thirty thousand dollars ($30,000) per participant for the first year of participation. For the second year of participation, the amount of the scholarship loan per participant shall be sixty percent (60%) of the beginning salary for an assistant principal plus four thousand one hundred dollars ($4,100) for tuition, fees, and books. The Commission may adjust the amount of the scholarship loan specified in this subsection to take into account increases in tuition, fees, and the cost of books, increases in the State principal assistant salary schedule, and changes in the stipend paid to participants in the program during the second year internship.

(d) The Commission shall adopt stringent standards, which may include standardized test scores, undergraduate performance, job experience and performance, leadership and management abilities, and other standards deemed appropriate by the Commission, to ensure that only the best potential students receive scholarship loans under the Principal Fellows Program. The Commission shall consider the qualifications of all applicants fairly, regardless of gender or race, and shall consider the geographic diversity of the State. Scholarship loans under the Principal Fellows Program shall be awarded only to applicants who meet the standards set by the Commission, are domiciled in North Carolina, and who agree to work as school administrators in a North Carolina public school or at a school operated by the United States government in North Carolina upon completion of the two-year school administrator program supported by the loan.

(e) The Commission shall develop and administer the Principal Fellows Program in cooperation with school administrator programs at institutions approved by the Commission. The Commission shall develop criteria and a process for the approval of campus program sites. Extracurricular enhancement activities shall be coordinated with each fellow's campus program and shall focus on the leadership development of program fellows.

(f) The Commission may form regional review committees to assist it in identifying the best applicants for the program. The Commission and the review committees shall make an effort to identify and encourage women and minorities and others who may not otherwise consider a career in school administration to apply for the Principal Fellows Program.

(g) Upon the naming of recipients of the scholarship loans by the Principal Fellows Commission, the Commission shall transfer to the State Education Assistance Authority (SEAA) its decisions. The SEAA shall perform all of the administrative functions necessary to implement this Article, which functions shall include: rule making, dissemination of information, disbursement, receipt, liaison with participating educational institutions, determination of the acceptability of service repayment agreements, and all other functions necessary for the execution, payment, and enforcement of promissory notes required under this Article. (1993, c. 321, s. 85(a); 2006-66, ss. 9.16(a), (b).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.16.(a), (b), effective July 10, 2006, and applicable to recipients of scholarship loans for the 2006-2007 academic year and each subsequent academic year, substituted "amount specified in subsection (c1) of this section" for "amount of twenty thousand dollars ($20,000) per year, per recipient" in the first sentence of subsection (c); and added subsection (c1).

ARTICLE 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

§ 116-143. (Effective until July 1, 2007) State-supported institutions of higher education required to charge tuition and fees.

(a) The Board of Governors of the University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

(b) In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished.

(c) Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of the University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

(d) Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of the University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of the University of North Carolina may during the period of normal employment enroll for not more than three courses per year in the University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586; 1961, c. 833, s. 16.1; 1963, c. 448, s. 27.1; 1965, c. 903; 1971, c. 845, ss. 6, 10; c. 1086, s. 2; c. 1244, s. 12; 1973, c. 116, s. 1; 1977, c. 605; 1981, c. 859, s. 41.4; 2006-66, s. 9.12.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-143.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Effect of Amendments. — Session Laws 2006-66, s. 9.12, effective July 1, 2006, designated the formerly undesignated paragraphs as subsections (a) through (d); and in subsection (d), substituted "three courses per year" for "one course per semester."

§ 116-143. (Effective July 1, 2007) State-supported institutions of higher education required to charge tuition and fees.

(a) The Board of Governors of The University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions of higher education enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

(b) In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished. Notwithstanding this section, neither the Board of Governors of The University of North Carolina nor its Board of Trustees shall impose any tuition or mandatory fee at the North Carolina School of Science and Mathematics without the approval of the General Assembly.

(c) Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of The University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

(d) Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of The University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of The University of North Carolina may during the period of normal employment enroll for not more than three courses per year in The University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586; 1961, c. 833, s. 16.1; 1963, c. 448, s. 27.1; 1965, c. 903; 1971, c. 845, ss. 6, 10; c. 1086, s. 2; c. 1244, s. 12; 1973, c. 116, s. 1; 1977, c. 605; 1981, c. 859, s. 41.4; 2006-66, s. 9.11(i).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-143.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11.(i), effective July 1, 2007, added "of higher education" preceding "enumerated in G.S. 116-4 in such amount" in subsection (a); and added the last sentence in subsection (b); and made minor stylistic changes throughout.

Session Laws 2006-66, s. 9.12, effective July 1, 2006, designated the formerly undesignated paragraphs as subsections (a) through (d); and in subsection (d), substituted "three courses per year" for "one course per semester".

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-175.1. (Repealed effective July 1, 2007) Consultation with Advisory Budget Commission.

Whenever this Article requires the approval of the Director of the Budget of an action, the Director of the Budget may consult with the Advisory Budget Commission before giving approval. (1983, c. 577, s. 5; 1985 (Reg. Sess., 1986), c. 955, s. 36.)

Section Repealed effective July 1, 2007. — This section is repealed, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, by Session Laws 2006-203, s. 52.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this acts, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ 116-187.1. (Repealed effective July 1, 2007) Consultation with Advisory Budget Commission.

Whenever this Article requires the approval of the Director of the Budget of an action, the Director of the Budget may consult with the Advisory Budget Commission before giving approval. (1983, ch. 577, s. 7; 1985 (Reg. Sess., 1986), c. 955, s. 37.)

Section Repealed Effective July 1, 2007. — This section is repealed, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, by Session Laws 2006-203, s. 53.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this acts, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 23.

State Education Assistance Authority.

§ 116-209.19. (Effective until July 1, 2007) Grants to students.

The Authority is authorized to make grants to eligible students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt

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rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Secretary of Administration, after consultation with the Board of Governors of The University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes and community colleges created and existing under Chapter 115D of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the Executive Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of The University of North Carolina and the North Carolina School of the Arts for all institutions in such category, all as shall be determined by the Secretary of Administration after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority, in determining the needs of students for grants, may among other factors, give consideration to the amount of other financial assistance that may be available to the students, such as nonrepayable awards under the Pell Grant Program, the Health Professions Education Assistance Act or other student assistance programs created by federal law.

Prior to taking any action under this subsection, the Secretary of Administration may consult with the Advisory Budget Commission. (1971, c. 392, s. 11; c. 1244, s. 14; 1975, c. 879, s. 46; 1979, c. 165, s. 9; 1983, c. 717, s. 35; 1985 (Reg. Sess., 1986), c. 955, ss. 38, 39; 1987, c. 227, s. 8; c. 564, s. 23.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-209.19.

§ 116-209.19. (Effective July 1, 2007) Grants to students.

The Authority is authorized to make grants to eligible students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regula-

G.S. 116-209.19 is set out twice. See notes.

tions and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Secretary of Administration, after consultation with the Board of Governors of the University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes and community colleges created and existing under Chapter 115D of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the State Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of the University of North Carolina and the North Carolina School of the Arts for all institutions in such category, all as shall be determined by the Secretary of Administration after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority, in determining the needs of students for grants, may among other factors, give consideration to the amount of other financial assistance that may be available to the students, such as nonrepayable awards under the Pell Grant Program, the Health Professions Education Assistance Act or other student assistance programs created by federal law. (1971, c. 392, s. 11; c. 1244, s. 14; 1975, c. 879, s. 46; 1979,c. 165, s. 9; 1983, c. 717, s. 35; 1985 (Reg. Sess., 1986), c.955, ss. 38, 39; 1987, c. 227, s. 8; c. 564, s. 23; 2006-203, s. 54.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-209.19.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 54, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act" for "Executive Budget Act" in the last sentence of the first paragraph; and deleted the former last paragraph, which read: "Prior to taking any action under this subsection, the Secretary of Administration may consult with the Advisory Budget Commission."

§ 116-209.35. Teacher Assistant Scholarship Fund.

(a) There is established the Teacher Assistant Scholarship Fund. The purpose of the Fund is to provide scholarships to teacher assistants who are pursuing college degrees to become teachers. The State Education Assistance Authority shall administer the Fund.

(b) Criteria for awarding the scholarships shall be developed by the Board of Governors of The University of North Carolina in consultation with the State Board of Education and the State Board of Community Colleges and shall include all of the following:

(1) An applicant shall be employed full time as a teacher assistant in North Carolina.

(2) An applicant shall be enrolled in an accredited bachelors degree program in an institution of higher education in North Carolina.

(3) An applicant shall be a resident of North Carolina. For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1.

(4) Any additional criteria that the Board of Governors considers necessary to administer the Fund effectively, including all of the following:
  a. Consideration of the appropriate numbers of minority applicants and applicants from diverse socioeconomic backgrounds to receive scholarships pursuant to this section.
  b. Consideration of the academic qualifications of the individuals applying to receive funds.
  c. Consideration of the commitment an individual applying to receive funds demonstrates to the profession of teaching.

(c) The scholarships shall be available for part-time or full-time course work through all off-campus or distance education teacher education programs.

(d) The Board of Governors of The University of North Carolina, the State Board of Education, and the State Board of Community Colleges shall: (i) prepare a clear written explanation of the Teacher Assistant Scholarship Fund and the information regarding the availability and criteria for awarding the scholarships, and (ii) shall provide that information to the appropriate counselors in each local school system and shall charge those counselors to inform teacher assistants about the scholarships and to encourage teacher assistants to apply for the scholarships.

(e) The Board of Governors of The University of North Carolina shall adopt rules to implement this section.

(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by December 1 each year regarding the Fund and scholarships awarded from the Fund. (2001-424, s. 31.5(a); 2006-95, s. 2.3.)

Effect of Amendments. — Session Laws 2006-95, s. 2.3, effective July 10, 2006, substituted “December 1” for “March 1” in the middle of subsection (f).

§ 116-209.36. Physical Education — Coaching Scholarship Loan Fund.

(a) There is established the Physical Education — Coaching Scholarship Loan Fund. The purpose of the Fund is to provide scholarship loans to students who are pursuing college degrees to become public schoolteachers and coaches or assistant coaches. Coaching Fellows shall be offered a curriculum that advances skills in physical education and coaching and that instills a strong motivation not only to remain in the coaching profession but to provide leadership in the schools where they coach. The State Education Assistance Authority shall administer the Fund. The Fund shall provide 25 scholarship loans per year.

(b) Criteria for awarding the scholarship loans shall be developed by the State Education Assistance Authority in consultation with the Board of Governors of The University of North Carolina and shall include all of the following:

(1) An applicant shall be enrolled in an accredited bachelors degree program in an institution of higher education in North Carolina.

(2) All students shall enter into a legal agreement and promissory note with the Authority to accept employment as a coach or coaching assistant in an elementary or secondary school in North Carolina in exchange for receiving any funds, which agreement shall include

stipulation that the student agrees to accept employment in rural or other need-based counties.

(3) An applicant shall be a resident of North Carolina. For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1.

(4) Any additional criteria that the State Education Assistance Authority considers necessary to administer the Fund effectively, including all of the following:
  a. Consideration of applicants from diverse backgrounds to receive scholarships pursuant to this section.
  b. Consideration of the academic qualifications of the individuals applying to receive funds.
  c. Consideration of the commitment an individual applying to receive funds demonstrates to the profession of coaching.

(c) The State Education Assistance Authority shall: (i) prepare a clear written explanation of the Physical Education — Coaching Scholarship Loan Fund and the information regarding the availability and criteria for awarding the scholarships, and (ii) provide that information to the appropriate counselors in each local school system and shall charge those counselors to inform students about the scholarships and to encourage them to apply for the scholarships.

(d) The State Education Assistance Authority shall administer the Fund and shall ensure that the loan amount is limited to four thousand dollars ($4,000) per recipient per year.

(e) The Authority shall ensure that the following loan cancellations and repayment schedules apply to all funds distributed pursuant to this section:

(1) The individual who graduates with a bachelors degree and who works as a school coach or coaching assistant in a rural or other need-based area of North Carolina shall have that amount of the loan cancelled that is based on the amount of time employed and the number of academic years funds were received. One full year of employment shall cancel one academic year's loan.

(2) The individual who graduates with a bachelors degree and who works as a school coach or assistant coach in a rural or other need-based area of North Carolina for the equivalent of the total number of academic years funds were received shall have the entire loan cancelled.

(3) The individual who graduates with a bachelors degree and who does not work as a school coach or assistant coach in a rural or other need-based area of North Carolina for any or all of the equivalent of the number of years funds were received shall repay the loan to the Authority according to a schedule prescribed in the promissory note, plus ten percent (10%) annual interest.

(4) The individual who does not graduate with a bachelors degree shall repay the loan according to a schedule prescribed by the Authority, not to exceed fifteen percent (15%) annual interest. In establishing a schedule and interest rate, the Authority shall take into consideration the reasons the individual did not graduate with a bachelors degree.

The Authority shall ensure that all repayments, including accrued interest, shall be placed in the Fund.

The Authority may forgive or reduce any loan repayment if the Authority considers that extenuating circumstances exist that would make repayment impossible.

(f) The State Education Assistance Authority, in consultation with the Board of Governors of The University of North Carolina, shall adopt rules to implement this section.

(g) The State Education Assistance Authority shall report to the Joint Legislative Education Oversight Committee by December 1 each year regarding the Fund and scholarship loans awarded from the Fund. (2005-276, s. 9.31; 2006-95, s. 2.4.)

Effect of Amendments. — Session Laws 2006-95, s. 2.4, effective July 10, 2006, substituted "December 1" for "March 1" in the middle of subsection (g).

§ 116-209.38. Future Teachers of North Carolina Scholarship Loan Fund.

(a) There is established the Future Teachers of North Carolina Scholarship Loan Fund. The purpose of the Fund is to provide a two-year scholarship loan of six thousand five hundred dollars ($6,500) per year for any North Carolina student pursuing a college degree to teach in the public schools of the State. The scholarship loan shall be paid only for the student's junior and senior years. The scholarship loan is available if the student is enrolled in a State institution of higher education or a private institution of higher education located in this State that has an accredited teacher preparation program for students planning to become certified teachers in North Carolina. The State Education Assistance Authority shall administer the Fund and shall award 100 scholarship loans annually.

(b) The Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, shall develop the criteria for awarding the scholarship loans under this section and shall adopt very stringent standards for awarding these scholarship loans to ensure that only the best students receive them. Additional criteria for awarding a scholarship loan under this section shall include all of the following:

(1) The student is one who either: (i) maintained a "B" or better average in college and is enrolled as a junior or senior in a teacher preparation program at any of the institutions described by subsection (a) of this section; or (ii) completed a college transfer curriculum at a community college in the State's Community Colleges System, maintained a "B" or better average in the community college courses, and is accepted and enrolled in a teacher preparation program at one of the institutions described by subsection (a) of this section.

(2) The student agrees to become certified in math, science, special education, or English as a Second Language and teach full-time in that subject area in a North Carolina public school for three years within five years after graduation.

(3) Any additional criteria that the Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, considers necessary to administer the Fund effectively.

(c) If a student who is awarded a scholarship loan under this section fails to comply with the provisions of this section or the terms of the agreement awarding the scholarship loan, then the student shall repay the full amount of the scholarship loan provided to the student and the appropriate amount of interest as determined by the State Education Assistance Authority.

(d) The Board of Governors of The University of North Carolina, the State Board of Education, and the State Board of Community Colleges shall: (i) prepare a clear written explanation of the Future Teachers of North Carolina Scholarship Fund and the information regarding the availability and criteria for awarding the scholarship loans, and (ii) shall provide that information to the appropriate counselors in each local school system and the appropriate institutions of higher education and shall charge those counselors to inform students about the scholarship loans and to encourage them to apply for the scholarship loans.

(e) The Board of Governors of The University of North Carolina shall adopt rules to implement this section.

(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by December 1 each year regarding the Fund and scholarship loans awarded from the Fund. (2005-276, s. 9.11(a); 2006-95, s. 2.5.)

Effect of Amendments. — Session Laws 2006-95, s. 2.5, effective July 10, 2006, substituted "December 1" for "March 1" in the middle of subsection (f).

Article 26.

Liability Insurance or Self-Insurance.

§ 116-224. (Effective July 1, 2007) Appropriation.

The funds described by this Article are appropriated and shall be used only as provided by this Article. (2006-203, s. 54.1.)

Editor's Note. — Session Laws 2006-203, s. 126, made this section effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Article 29.

The North Carolina School of Science and Mathematics.

§ 116-230.1. (Effective until July 1, 2007) Policy.

It is hereby declared to be the policy of the State to foster, encourage, promote, and provide assistance in the development of skills in science and mathematics among the people of the State. (1985, c. 757, s. 206(b).)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-230.1.

§ 116-230.1. (Effective July 1, 2007) Policy.

It is hereby declared to be the policy of the State to foster, encourage, promote, and provide assistance in the development of skills and careers in science and mathematics among the people of the State. (1985, c. 757, s. 206(b); 2006-66, s. 9.11(j).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-230.1.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11.(j), effective July 1, 2007, inserted "and careers" following "development of skills."

§ 116-231. (Effective until July 1, 2007) Reestablishment of the North Carolina School of Science and Mathematics as an Affiliated School of The University of North Carolina.

The North Carolina School of Science and Mathematics is hereby reestablished, as an affiliated school of The University of North Carolina, and shall be governed by a Board of Trustees as prescribed in this Article. (1985, c. 757, s. 206(b).)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-231.

§ 116-231. (Effective July 1, 2007) Reestablishment of the North Carolina School of Science and Mathematics as a Constituent High School of The University of North Carolina.

The North Carolina School of Science and Mathematics is hereby reestablished, as a constituent high school of The University of North Carolina, and shall be governed by the Board of Governors as prescribed in this Chapter and a Board of Trustees as prescribed in this Article. (1985, c. 757, s. 206(b); 2006-66, s. 9.11(k).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-231.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11(k), effective July 1, 2007, substituted "a Constituent High School" for "an Affiliated School" in the section catchline; and in the text of the section, substituted "a constituent high school" for "an affiliated school", and inserted "the Board of Governors as prescribed in this Chapter and."

§ 116-232. (Effective until July 1, 2007) Purposes.

The purposes of the School shall be to foster the educational development of North Carolina high school students who are academically talented in the areas of science and mathematics and show promise of exceptional development through participation in a residential educational setting emphasizing instruction in the areas of science and mathematics; to develop, evaluate, and disseminate experimental instructional programs; and to serve all schools of the State through research and outreach activities. (1985, c. 757, s. 206(b).)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-232.

§ 116-232. (Effective July 1, 2007) Purposes.

The purposes of the School shall be to foster the educational development of North Carolina high school students who are academically talented in the areas of science and mathematics and show promise of exceptional development and global leadership through participation in a residential educational setting emphasizing instruction in the areas of science and mathematics; and to provide instruction, methods, and curricula designed to improve teaching

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and learning in North Carolina and the nation with an emphasis on distance education and programs that expand pathways for students into careers in science and mathematics. (1985, c. 757, s. 206(b); 2006-66, s. 9.11(l).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-232.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11(*l*), effective July 1, 2007, rewrote the section.

§ 116-233. Board of Trustees; appointment; terms of office.

(a) **(Effective until July 1, 2007)** There shall be a Board of Trustees of the School, which shall consist of 27 members as follows:

(a) **(Effective July 1, 2007)** Notwithstanding the provisions of G.S. 116-31(d), there shall be a Board of Trustees of the School, which shall consist of 27 members as follows:

(1) Thirteen members who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district.

(2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina.

(3) Three members, ex officio, who shall be the chief academic officers, respectively, of constituent institutions. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief academic officers shall so serve, such designations to expire on June 30, 1989, and quadrennially thereafter.

(4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter.

(5) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) Two members appointed by the Governor.

(b) Appointed members of the Board of Trustees shall be selected for their interest in and commitment to public education and to the purposes of the School, and they shall be charged with the responsibility of serving the interests of the whole State. In appointing members, the objective shall be to obtain the services of the best qualified persons, taking into consideration the desirability of diversity of membership, including men and women, representatives of different races, and members of different political parties.

(c) No member of the General Assembly or officer or employee of the State or of the School or of any constituent institution of The University of North Carolina, or the spouse of any such member, officer or employee, shall be eligible to be appointed to the Board of Trustees; and any appointed trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, of the School, or of a constituent institution of The University of North Carolina, or whose spouse is elected or appointed to the

General Assembly or becomes such an officer or employee, shall be deemed thereupon to resign from his or her membership on the Board of Trustees. This subsection does not apply to ex officio members.

(d) Members appointed under subdivisions (1) or (2) of subsection (a) of this section shall serve staggered four-year terms expiring June 30 of odd numbered years.

(d1) Only an ex officio member shall be eligible to serve more than two successive terms.

(d2) Any vacancy in the membership of the Board of Trustees appointed under G.S. 116-233(a)(1) or (2) shall be reported promptly by the Secretary of the Board of Trustees to the Board of Governors of The University of North Carolina, which shall fill any such vacancy by appointment of a replacement member to serve for the balance of the unexpired term. Any vacancy in members appointed under G.S. 116-233(a)(5) or (6) shall be filled in accordance with G.S. 120-122. Any vacancy in members appointed under G.S. 116-233(a)(7) shall be filled by the Governor for the remainder of the unexpired term. Reapportionment of congressional districts does not affect the right of any member to complete the term for which the member was appointed.

(e) Of the initial members appointed under G.S. 116-233(a)(5), one member shall serve a term to expire June 30, 1987, and one member shall serve a term to expire June 30, 1989. Subsequent appointments shall be for four-year terms. The initial members appointed under G.S. 116-233(a)(6), shall be appointed for terms to expire June 30, 1987. Subsequent appointments shall be for two-year terms. The initial members appointed under G.S. 116-233(a)(7) shall be appointed for terms to expire January 15, 1989. Successors shall be appointed for four-year terms.

(f) Whenever an appointed member of the Board of Trustees shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present at three successive regular meetings of the Board, his or her place as a member of the Board shall be deemed vacant. (1985, c. 757, s. 206(b); 1991 (Reg. Sess., 1992), c. 879, ss. 1, 2; 1995, c. 490, s. 45; c. 509, s. 65; 2003-57, ss. 1, 2; 2006-66, s. 9.11(m).)

Introductory Paragraph of Subsection (a) Set Out Twice. — The first version of the introductory paragraph in subsection (a) set out above is effective until July 1, 2007. The second version of the introductory paragraph of subsection (a) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, 9.11(m), effective July 1, 2007, substituted "Notwithstanding the provisions of G.S. 116-31(d), there" for "There" in the introductory paragraph of subsection (a).

§ 116-234. (Effective until July 1, 2007) Board of Trustees; meetings; rules of procedure; officers.

(a) The Board of Trustees shall meet at least four times a year and may hold special meetings at any time, at the call of the chairman or upon petition addressed to the chairman by at least four of the members of the Board.

(b) The Board of Trustees shall elect a chairman and a vice-chairman; no ex officio member may hold such an office.

(c) The Board of Trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233(a)(3), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233(a)(3) shall be reimbursed for travel expenses as provided by G.S. 138-6. (1985, c. 757, s. 206(b); 1995, c. 509, s. 66.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1 2007, see the following section, also numbered G.S. 116-234.

§ 116-234. (Effective July 1, 2007) Board of Trustees; meetings; rules of procedure; officers.

(a) The Board of Trustees shall meet at least three times a year and may hold special meetings at any time, at the call of the chairman or upon petition addressed to the chairman by at least four of the members of the Board.

(b) Notwithstanding the provisions of G.S. 116-32, the Board of Trustees shall elect a chairman and a vice-chairman; no ex officio member may hold such an office.

(c) The Board of Trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233(a)(3), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233(a)(3) shall be reimbursed for travel expenses as provided by G.S. 138-6. (1985, c. 757, s. 206(b); 1995, c. 509, s. 66; 2006-66, s. 9.11(n).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-234.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11(n), effective July 1, 2007, substituted "three times a year" for "four times a year" in subsection (a); and substituted "Notwithstanding the provisions of G.S. 116-32, the" for "The" at the beginning of subsection (b).

§ 116-235. (Effective until July 1, 2007) Board of Trustees; powers and duties.

(a) Academic Program. —

(1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade.

(2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the instructional day, and the number of instructional days in each term.

(b) Students. —

(1) Admission of Students. — The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be either a legal resident of the State, as defined by G.S. 116-143.1(a)(1), or a student whose parent is an active duty member of the armed services, as defined by G.S. 116-143.3(2), who is

G.S. 116-235 is set out twice. See notes.

abiding in this State incident to active military duty at the time the application is submitted, provided the student shares the abode of that parent; eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified rising high school juniors is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of rising high school juniors offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.

(2) School Attendance. — Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 1 misdemeanor. The Director of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(3) Student Discipline. — Rules of conduct governing students of the School shall be established by the Board of Trustees. The Director, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

(c) **(Repealed July 1, 2007 — see note)** Personnel. —

(1) Faculty Members. — Members of the faculty of the School shall be exempt from the provisions of the State Personnel Act. The Board of Trustees shall adopt all policies and regulations governing the qualifications, criteria for employment, assignment, health requirements, terms and conditions of employment, compensation and benefits, and the supervision and management of all faculty members of the School, and such system of employment and employment security as the Board of Trustees may deem to be appropriate.

(2) Senior Administrative Officers. — The senior administrative officers of the School shall consist of a Director, as provided by G.S. 116-236, and such other senior academic and administrative officers as shall be selected and employed by the Board of Trustees. They shall be governed by such policies and regulations and provisions for compensation as the Board of Trustees may adopt, and shall be exempt from the State Personnel Act.

(3) Other Employees. — All other employees of the School shall be subject to the State Personnel Act and to such supplemental policies and regulations, not inconsistent therewith, as may be adopted by the Board of Trustees.

(4) All employees of the School shall be deemed to be employees of the State and shall be covered by all provisions of State law relevant

thereto, including Chapter 97, Chapter 135, and Article 31A of Chapter 143 of the General Statutes.

(d) **(Repealed July 1, 2007 — see note)** Finances, Property, Obligations. —

(1) The Board of Trustees shall develop, prepare, and present to the Board of Governors a recommended budget for the School, which shall be transmitted by the Board of Governors to the General Assembly.

(2) Subject to all applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Trustees may acquire, hold, convey or otherwise dispose of, and invest or reinvest any and all real and personal property, except that the Board of Trustees may not convey any of the land constituting the campus, except for necessary easements, without the approval of the General Assembly. All power and authority exercised with regard to the acquisition, operation, maintenance, and disposition of real and personal property shall be subject to the provisions of Chapters 143 and 146 of the General Statutes except as provided in G.S. 116-238.

(3) The Board of Trustees is authorized to accept, receive, and use any federal funds, or aids, that may be made available by the federal government which, in the judgment of the Board of Trustees, would be beneficial to the operation of the School.

(4) The Board of Trustees is authorized to establish a permanent endowment fund as provided in G.S. 116-238.

(5) The lands and other property of the School shall be exempt from all kinds of public taxation, except as may be provided for by State law.

(6) The Board of Trustees may establish policies and regulations for the sale of goods and services, not inconsistent with the provisions of Article 11 of Chapter 66 of the General Statutes.

(7) The Board of Trustees shall not impose any fee without the approval of the General Assembly, unless the fee is a traffic, parking, or motor vehicle registration fee authorized under subsection (e) of this section.

(e) **(Repealed July 1, 2007 — see note)** Regulation of Traffic and Parking and Registration of Motor Vehicles. —

(1) Unless the context clearly requires another meaning, the following words and phrases have the meanings indicated when used in this subsection:

   a. "Board of Trustees" means the Board of Trustees of the North Carolina School of Science and Mathematics.

   b. "Campus" means that School property, without regard to location, which is used wholly or partly for the purposes of the North Carolina School of Science and Mathematics.

   c. "School property" means property owned or leased in whole or in part by the State of North Carolina and which is subject to the general management and control of the Board of Trustees of the North Carolina School of Science and Mathematics.

(2) Except as otherwise provided in this subsection, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of motor vehicles thereon are applicable to all streets, alleys, driveways, parking lots, and parking structure on School property. Nothing in this subsection modifies any rights of ownership or control of School property, now or hereafter vested in the Board of Trustees or the State of North Carolina.

(3) The Board of Trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of

motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the Board of Trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the Board of Trustees. The Board of Trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this section.

(4) The Board of Trustees may by ordinance provide for the registration of motor vehicles maintained or operated on the campus by any student, faculty member, or employee of the School, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered motor vehicle on the campus when the vehicle is required by the ordinance to be registered.

(5) The Board of Trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students, faculty, and employees of the School and members of the general public attending schools, conferences, or meetings at the School, visiting or making use of any School facilities, or attending to official business with the School. The Board of Trustees may issue permits to park in these lots and garages and may charge a fee therefor. The Board of Trustees may also by ordinance make it unlawful for any person to park a motor vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle.

(6) The Board of Trustees may by ordinance set aside spaces in designated parking areas or facilities in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the Board of Trustees may install a system of parking meters and make it unlawful for any person to park a motor vehicle in a metered space without activating the meter for the entire time that the vehicle is parked, up to the maximum length of time allowed for that space. The meters may be activated by coins of the United States. The Board of Trustees may also install automatic gates, employ attendants, and use any other device or procedure to control access to and collect the fees for using its parking areas and facilities.

(7) The Board of Trustees may by ordinance provide for the issuance of stickers, decals, permits, or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of them.

(8) Violation of an ordinance adopted under any portion of this subsection is a Class 3 misdemeanor. An ordinance may provide that certain acts prohibited thereby shall not be enforced by criminal sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor.

(9) An ordinance adopted under any portion of this subsection may provide that violation subjects the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged. The Board of Trustees may establish procedures for the collection of these penalties and they may be enforced by civil action in the nature of debt. The Board of Trustees may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or upon repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle

registration, and termination or suspension of enrollment in or employment by the School.

(10) An ordinance adopted under any portion of this subsection may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether the School does its own removal and disposal of motor vehicles or contracts with another person to do so, the School shall provide a hearing procedure for the owner. For purposes of this subdivision, the definitions in G.S. 20-219.9 apply.

a. If the School operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

b. If the School operates in such a way that it is responsible for collecting towing fees, it shall:

1. Provide by contract or ordinance for a schedule of reasonable towing fees,
2. Provide a procedure for a prompt fair hearing to contest the towing,
3. Provide for an appeal to district court from that hearing,
4. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
5. If the School chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the School may destroy it.

(11) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the Board of Trustees is prima facie evidence that the vehicle was parked by:

a. The person holding a School parking permit for the vehicle, or

b. If no School parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the School pursuant to subdivision (3), above, or

c. If no School parking permit has been issued for the vehicle and the vehicle is not registered with the School, the person in whose name it is registered with the North Carolina Division of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subdivision (11) applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the Board of Trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

(12) The Board of Trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(13) All ordinances adopted under this subsection shall be recorded in the minutes of the Board of Trustees and copies thereof shall be filed in the office of the Secretary of State. The Board of Trustees shall provide for printing and distributing copies of its traffic and parking ordinances.

(14) All moneys received pursuant to this subsection shall be placed in a trust account of the School and may be used for any of the following purposes:

a. To defray the cost of administering and enforcing ordinances adopted under this subsection;

G.S. 116-235 is set out twice. See notes.

b. To develop, maintain, and supervise parking areas and facilities;
c. To fulfill other purposes related to parking, traffic, and transportation on the campus.

(f) **(Repealed July 1, 2007 — see note)** Status as a Body Politic and Corporate. — The Board of Trustees of the School is hereby made a body corporate and politic, to be known and distinguished as "The Board of Trustees of the North Carolina School of Science and Mathematics." The Board of Trustees shall be capable in law to sue and be sued and of prosecuting and defending suits for or against the corporation, subject to the provisions of G.S. 114-2 and G.S. 147-17.

(g) **(Repealed July 1, 2007 — see note)** The Board of Trustees may adopt such other policies and regulations as it may consider necessary and expedient for the operation and management of the affairs of the School, not inconsistent with the provisions of this Article.

(h) The Board of Trustees shall keep the Board of Governors fully and promptly informed, through the President of The University of North Carolina, concerning activities of the Board of Trustees, including notices of meetings and copies of the minutes of all such meetings.

(i) The Display of the United States and North Carolina Flags and the Recitation of the Pledge of Allegiance. — The Board of Trustees shall adopt policies to require (i) the display of the United States and North Carolina flags in each classroom when available, (ii) the recitation of the Pledge of Allegiance on a daily basis, and (iii) the instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom. (1985, c. 757, s. 206(b); 1993, c. 539, ss. 896, 897; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 15.1; 2002-126, s. 9.12(c); 2005-318, s. 2; 2005-445, s. 8.1; 2006-137, s. 5.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 116-235.

Effect of Amendments. —

Session Laws 2006-137, s. 5, effective July 19, 2006, added subsection (i).

§ 116-235. (Effective July 1, 2007) Board of Trustees; additional powers and duties.

(a) In addition to the powers enumerated in Chapter 116, Article I, Part 3, the Board of Trustees shall have the powers and duties set out in this section.

(a1) Academic Program. —

(1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade.

(2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the instructional day, and the number of instructional days in each term.

(b) Students. —

(1) Admission of Students. — The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be either a legal resident of the State, as defined by G.S. 116-143.1(a)(1), or a student whose parent is an active duty

member of the armed services, as defined by G.S. 116-143.3(2), who is abiding in this State incident to active military duty at the time the application is submitted, provided the student shares the abode of that parent; eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified applicants is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of qualified applicants offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.

(2) School Attendance. — Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 1 misdemeanor. The Chancellor of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(3) Student Discipline. — Rules of conduct governing students of the School shall be established by the Board of Trustees. The Chancellor, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

(c) through (h). Repealed by Session Laws 2006-66, s. 9.11(s), effective July 1, 2007.

(i) The Display of the United States and North Carolina Flags and the Recitation of the Pledge of Allegiance. — The Board of Trustees shall adopt policies to require (i) the display of the United States and North Carolina flags in each classroom when available, (ii) the recitation of the Pledge of Allegiance on a daily basis, and (iii) the instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom. (1985, c. 757, s. 206(b); 1993, c. 539, ss. 896, 897; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 15.1; 2002-126, s. 9.12(c); 2005-318, s. 2; 2005-445, s. 8.1; 2006-66, ss. 9.11(o)-9.11(s); 2006-137, s. 5.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 116-235.

Editor's Note. — Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11.(o)-(s), effective July 1, 2007, inserted "additional" in the section catchline; added present subsection (a); and redesignated former subsection (a) as subsection (a1); substituted "qualified applicants" for "rising high school juniors" twice in subdivision (b)(1); substituted "Chancellor" for "Director" in subdivisions (b)(2) and (b)(3); and repealed subsections (c) through (h).

Session Laws 2006-137, s. 5, effective July 19, 2006, added subsection (i).

§ 116-236. (Repealed effective July 1, 2007) Director of the School.

Section Repealed Effective July 1, 2007. — This section is repealed, effective July 1, 2007, by Session Laws 2006-66, s. 9.11(t).

Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 116-237. (Repealed effective July 1, 2007) Educational Advisory Council.

Section Repealed Effective July 1, 2007. — This section is repealed, effective July 1, 2007, by Session Laws 2006-66, s. 9.11(u).

Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 116-238. (Repealed effective July 1, 2007) Endowment fund.

Section Repealed Effective July 1, 2007. — This section is repealed, effective July 1, 2007, by Session Laws 2006-66, s. 9.11(v).

Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

This section was also amended by Session Laws 2006-203, s. 55, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, which, in subsection (g), substituted "Chapters 143, 143C, and 146" for "Chapters 143 and 146," near the middle, and "the Budget" for "Budget" and deleted "after the Director of the Budget consults with the Advisory Budget Commission" at the end. See Editor's note for applicability. The section is set out above as repealed effective July 1, 2007.

Session Laws 2006-203, s. 126, provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 116-238.5. (Effective July 1, 2007) Appropriation.

The funds described in G.S. 116-235 and G.S. 116-238 are appropriated and shall be used only as provided by this Article. (2006-203, s. 55.1.)

Editor's Note. — Session Laws 2006-203, s. 55.1, makes this section effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Chapter 116D.

Higher Education Bonds.

Article 2.

General Obligation Bonds for Financing Capital Facilities for The University of North Carolina.

Sec.
116D-11. Issuance of bonds and notes.

Article 4.

Community Colleges Facilities General Obligation Finance Act.

Sec.
116D-46. Issuance of bonds and notes.

ARTICLE 1.

General Provisions.

§ 116D-1. Definitions.

Editor's Note. —

Session Laws 2000-3, s. 2, as amended by Session Laws 2001-424, s. 31.9, Session Laws 2002-126, s. 9.3, Session Laws 2003-284, s. 9.3, Session Laws 2004-124, s. 9.4, and by Session Laws 2006-146, ss. 3.1-3.3, makes provisions for the proceeds of the University Improvement General Obligation Bonds, and Session Laws 2000-3, s. 3, makes provisions for proceeds of Community College General Obligation Bonds. See Editor's Notes at G.S. 116D-6 and 116D-41.

ARTICLE 2.

General Obligation Bonds for Financing Capital Facilities for The University of North Carolina.

§ 116D-6. Short title.

Editor's Note. —

Session Laws 2000-3, s. 2(a), as amended by Session Laws 2001-424, s. 31.9, Session Laws 2002-126, s. 9.3, Session Laws 2003-284, s. 9.3, and by Session Laws 2006-146, ss. 3.1-3.3, directs that the proceeds of university improvement general obligation bonds and notes, including any premium thereon, except the proceeds of university improvement general obligation bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, are to be allocated and expended for paying the cost of university capital facilities, to the extent and as provided in Article 2 of Chapter 116D of the General Statutes, as enacted by the act and subject to change as provided in the act, and sets out a schedule of allocations for each of the constituent or affiliated institutions.

§ 116D-11. Issuance of bonds and notes.

(a) Terms and Conditions. — Bonds or notes may bear any dates, may be serial or term bonds or notes, or any combination of these, may mature in any amounts and at any times, not exceeding 25 years from their dates, may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts, may bear interest at any rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. — Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile of the Seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this Article.

(c) Manner of Sale; Expenses. — Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Application of Proceeds. — The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in the manner and under the restrictions, if any, that the Council of State may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

Any additional moneys which may be received by means of a grant or grants from the United States or any agency or department thereof or from any other source to aid in financing the cost of a capital facility may be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

(e) Notes; Repayment. — By and with the consent of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(1) For anticipating the sale of bonds, the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds.
(2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment or principal as they respectively become due.
(3) For the renewal of any loan evidenced by notes authorized in this Article.
(4) For the purposes authorized in this Article.
(5) For refunding bonds or notes as authorized in this Article.

Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which have been used in paying interest on or principal of the bonds.

(f) Refunding Bonds and Notes. — By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes for the purpose of refunding bonds or notes issued pursuant to this Article and to pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

(g) **(Effective until July 1, 2007)** University Improvement Bonds Fund. — The proceeds of university improvement general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "University Improvement Bonds Fund". Moneys in the University Improvement Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any university improvements authorized by this Article may be placed by the State Treasurer in the University Improvement Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

The proceeds of university improvement general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of university improvements, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of university improvement bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for university improvements shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(g) **(Effective July 1, 2007)** University Improvement Bonds Fund. — The proceeds of university improvement general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of

G.S. 116D-11(g) is set out twice. See note.

refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "University Improvement Bonds Fund". Moneys in the University Improvement Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any university improvements authorized by this Article may be placed by the State Treasurer in the University Improvement Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

The proceeds of university improvement general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of university improvements, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of university improvement bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for university improvements shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes. (2000-3, s. 1.2; 2001-414, s. 45; 2006-203, s. 56.)

Subsection (g) Set Out Twice. — The first version of subsection (g) set out above is effective until July 1, 2007. The second version of subsection (g) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 56, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "the State Budget Act, Chapter 143C of the General Statutes" for "the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes" at the end of the third paragraph of subsection (g). See Editor's note for applicability.

ARTICLE 3.

Special Obligation Bonds for Improvements to the Facilities of The University of North Carolina.

§ 116D-22. Definitions.

Editor's Note. —

Session Laws 2006-146, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resources Facility capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

§ 116D-26. Issuance of special obligation bonds and bond anticipation notes.

Editor's Note. —

Session Laws 2006-146, s. 1.5, provides: "Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the

Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 1.2 and 1.3 of this part. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 1.2 and 1.3 of this part plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 1.4 of this part."

ARTICLE 4.

Community Colleges Facilities General Obligation Finance Act.

§ 116D-41. Short title.

Editor's Note. —

Session Laws 2000-3, s. 3(d), as amended by Session Laws 2006-66, s. 8.8, provides: "If the State Board of Community Colleges determines that a community college has not met its matching requirements by July 1, 2007, with respect to a capital improvement project for which bond proceeds are allocated in this act, the Board shall certify that fact to the State Treasurer by October 1, 2007. All of these bond proceeds with respect to which the Board certifies that the matching requirement has not been met by July 1, 2007, shall be placed by the State Treasurer in a special account within the Community Colleges Bond Fund and shall be used for making grants to community colleges. Bond proceeds in the special account shall be allocated among the community colleges in accordance with the following conditions:

"(1) The State Board of Community Colleges shall generate, by October 1, 2007, a priority ranking of legitimate community college capital improvement needs using a formula based on objective meaningful factors relevant to capital needs, including actual and projected enrollment, space requirements, current capacity, construction costs, and any other factors the State Board considers relevant.

"(2) The State Board of Community Colleges shall provide the State Treasurer a projected allocation of the proceeds in the special account in accordance with this priority ranking, except that:

"a. No projected allocation shall be made for a community college that the Board certified in accordance with this subsection had failed to meet a matching requirement.

"b. No more than four million dollars ($4,000,000) shall be allocated to a single community college.

"c. Funds shall not be allocated for more than one project per community college.

"(3) The proceeds of grants made from bond proceeds in the special account shall be allocated and expended for paying the cost of community college capital improvements in accordance with this allocation by the State Board of Community Colleges, to the extent and as provided in this act. The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section. The Director of the Budget shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 116D-46. Issuance of bonds and notes.

(a) Terms and Conditions. — Bonds or notes may bear any dates, may be serial or term bonds or notes, or any combination of these, may mature in any amounts and at any times, not exceeding 25 years from their dates, may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts, may bear interest at any rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. — Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile of the Seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this Article.

(c) Manner of Sale; Expenses. — Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Application of Proceeds. — The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in the manner and under the restrictions, if any, that the Council of State may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

Any additional moneys which may be received by means of a grant or grants from the United States or any agency or department thereof or from any other source to aid in financing the cost of a capital facility may be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

(e) Notes; Repayment. — By and with the consent of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(1) For anticipating the sale of bonds the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds.

(2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment or principal as they respectively become due.

(3) For the renewal of any loan evidenced by notes authorized in this Article.

(4) For the purposes authorized in this Article.

(5) For refunding bonds or notes as authorized in this Article.

Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which have been used in paying interest on or principal of the bonds.

(f) Refunding Bonds and Notes. — By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes for the purpose of refunding bonds or notes issued pursuant to this Article and to pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

(g) **(Effective until July 1, 2007)** Community College Bonds Fund. — The proceeds of community college general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Community College Bonds Fund". Moneys in the Community College Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any community college capital facilities authorized by this Article may be placed by the State Treasurer in the Community College Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

The proceeds of community college general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of grants to community colleges for capital facilities, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of community college bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for grants to community colleges shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(g) **(Effective July 1, 2007)** Community College Bonds Fund. — The proceeds of community college general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Community College Bonds Fund". Moneys in the Community College Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any community college capital facilities authorized by this Article may be placed by the State Treasurer in the Community College Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

The proceeds of community college general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of grants to community colleges for capital facilities, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of community college bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for grants to community colleges shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes. (2000-3, s. 1.2; 2001-414, s. 46; 2006-203, s. 57.)

Subsection (g) Set Out Twice. — The first version of subsection (g) set out above is effective until July 1, 2007. The second version of subsection (g) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 57, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "the State Budget Act, Chapter 143C of the General Statutes" for "the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes" at the end of subsection (g).

Chapter 117.

Electrification.

Article 1.

Rural Electrification Authority.

Sec.

117-3.1. (Effective until July 1, 2007) Regulatory fee.
117-3.1. (Effective July 1, 2007) Regulatory fee.

Article 1.

Rural Electrification Authority.

§ 117-3.1. (Effective until July 1, 2007) Regulatory fee.

(a) Fee imposed. — It is the policy of the State of North Carolina to provide fair regulation of electric and telephone membership corporations in the interest of the public. The cost of regulating electric and telephone membership corporations is a burden incident to the privilege of operating as an electric or telephone membership corporation. Therefore, for the purpose of defraying the cost of regulating electric and telephone membership corporations, every electric and telephone membership corporation subject to the jurisdiction of the Authority shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public.

(b) Rate. — For each fiscal year, the regulatory fee shall be the greater of the following:

(1) The rate established by the General Assembly for that year for each electric membership corporation's North Carolina meter connected for service and each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.

(2) Four cents (4¢) for each electric membership corporation's North Carolina meter connected for service and for each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.

When the Authority prepares its budget request for the upcoming fiscal year, the Authority shall propose a rate for the regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143-11. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. If the General Assembly decides to set the regulatory fee at a rate higher than the rate in subdivision (2) of this subsection, it shall set the regulatory fee by law.

The regulatory fee may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Authority for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Authority for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Authority or a possible unanticipated increase

G.S. 117-3.1 is set out twice. See notes.

or decrease in North Carolina electric meters and North Carolina telephone access lines.

(c) When Due. — The regulatory fee imposed under this section is due and payable to the Authority on or before the 15th day of the second month following the end of each quarter. Every electric and telephone membership corporation subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Authority. The report shall state the electric or telephone membership corporation's total North Carolina electric meters or North Carolina telephone access lines connected for service for the preceding quarter and shall be accompanied by any supporting documentation that the Authority may by rule require.

(d) Use of Proceeds. — A special fund in the office of the State Treasurer, the North Carolina Rural Electrification Authority Fund (NCREA Fund), is created. The fees collected pursuant to this section and all other funds received by the Authority shall be deposited in the NCREA Fund. The NCREA Fund shall be placed in an interest bearing account and any interest or other income derived from the NCREA Fund shall be credited to the NCREA Fund. Moneys in the NCREA Fund shall only be spent pursuant to an appropriation by the General Assembly.

The NCREA Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the NCREA Fund shall revert to the General Fund. All funds credited to the NCREA Fund shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public as provided by this Chapter. (1991, c. 473, s. 1; 1991 (Reg. Sess., 1992), c. 803, s. 1.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 117-3.1.

§ 117-3.1. (Effective July 1, 2007) Regulatory fee.

(a) Fee imposed. — It is the policy of the State of North Carolina to provide fair regulation of electric and telephone membership corporations in the interest of the public. The cost of regulating electric and telephone membership corporations is a burden incident to the privilege of operating as an electric or telephone membership corporation. Therefore, for the purpose of defraying the cost of regulating electric and telephone membership corporations, every electric and telephone membership corporation subject to the jurisdiction of the Authority shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public.

(b) Rate. — For each fiscal year, the regulatory fee shall be the greater of the following:

(1) The rate established by the General Assembly for that year for each electric membership corporation's North Carolina meter connected for service and each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.

(2) Four cents (4¢) for each electric membership corporation's North Carolina meter connected for service and for each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.

When the Authority prepares its budget request for the upcoming fiscal year,

G.S. 117-3.1 is set out twice. See notes.

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the Authority shall propose a rate for the regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. If the General Assembly decides to set the regulatory fee at a rate higher than the rate in subdivision (2) of this subsection, it shall set the regulatory fee by law.

The regulatory fee may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Authority for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Authority for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Authority or a possible unanticipated increase or decrease in North Carolina electric meters and North Carolina telephone access lines.

(c) When Due. — The regulatory fee imposed under this section is due and payable to the Authority on or before the 15th day of the second month following the end of each quarter. Every electric and telephone membership corporation subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Authority. The report shall state the electric or telephone membership corporation's total North Carolina electric meters or North Carolina telephone access lines connected for service for the preceding quarter and shall be accompanied by any supporting documentation that the Authority may by rule require.

(d) Use of Proceeds. — A special fund in the office of the State Treasurer, the North Carolina Rural Electrification Authority Fund (NCREA Fund), is created. The fees collected pursuant to this section and all other funds received by the Authority shall be deposited in the NCREA Fund. The NCREA Fund shall be placed in an interest bearing account and any interest or other income derived from the NCREA Fund shall be credited to the NCREA Fund. Moneys in the NCREA Fund shall only be spent pursuant to an appropriation by the General Assembly.

The NCREA Fund shall be subject to the provisions of the State Budget Act except that no unexpended surplus of the NCREA Fund shall revert to the General Fund. All funds credited to the NCREA Fund shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public as provided by this Chapter. (1991, c. 473, s. 1; 1991 (Reg. Sess., 1992), c. 803, s. 1; 2006-203, s. 58.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the previous section, also numbered G.S. 117-3.1.

Editor's Note. — Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 58, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-3-5" for "G.S. 143-11" in the second sentence of the second paragraph of subsection (b); and substituted "State Budget Act" for "Executive Budget Act" in the first sentence of the last paragraph of subsection (d).

Article 2.

Electric Membership Corporations.

§ 117-6. Title of Article.

CASE NOTES

Cited in Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-7. Definitions.

CASE NOTES

Cited in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. Aug. 11, 2006).

§ 117-8. Formation in unserved communities; filing application with Rural Electrification Authority.

CASE NOTES

Cited in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. Aug. 11, 2006).

§ 117-10. Formation authorized.

CASE NOTES

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. Aug. 11, 2006).

Cited in Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-13. Board of directors; compensation; president and secretary.

CASE NOTES

Diversity Among Directors. — Judgment dismissing rural electric cooperative members' claims of racial discrimination against a rural electric cooperative and its board of directors was affirmed as the members failed to present sufficient evidence of a violation of any diversity rule contained in G.S. 117-13 and G.S. 117-16. Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

Power to Appoint Director. — Board of directors of a nonprofit rural electric cooperative had the power to appoint two new directors to fill vacant positions that were added to the cooperative. Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-14. Powers of board.

CASE NOTES

Bad Faith on Part of Directors. — Judgment dismissing rural electric cooperative members' claims of racial discrimination against a rural electric cooperative and its board of directors was affirmed as the members failed to demonstrate bad faith on the part of the board members in exercising their powers under G.S. 117-14. Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

Power to Appoint Director. — Board of directors of a nonprofit rural electric cooperative had the power to appoint two new directors to fill vacant positions that were added to the cooperative. Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-15. Certificates of membership.

CASE NOTES

Cited in Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-16. Corporate purpose; terms and conditions of membership.

CASE NOTES

Pole attachment license is not a service. — By encumbering its property through pole-attachment license agreements with a cable operator, an electric membership corporation did not thereby render services, and thus the corporation did not violate the G.S. 117-16 requirement of reasonable services by its demand that the operator pay a higher annual rate for the attachment of its cable to the corporation's poles. Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. Aug. 11, 2006).

Diversity Among Directors. — Judgment dismissing rural electric cooperative members' claims of racial discrimination against a rural electric cooperative and its board of directors was affirmed as the members failed to present sufficient evidence of a violation of any diversity rule contained in G.S. 117-13 and G.S. 117-16. Hammonds v. Lumbee River Elec. Mbrshp. Corp., — N.C. App. —, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-16.1. Discrimination prohibited.

CASE NOTES

Pole attachment license is not a service or a rate. — By encumbering its property through pole-attachment license agreements with a cable operator, an electric membership corporation did not thereby render services or charge a rate, and thus the corporation did not violate the G.S. 117-16.1 requirement of providing reasonable and nondiscriminatory services by its demand that the operator pay a higher annual rate for the attachment of its cable to the corporation's poles. Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. Aug. 11, 2006).

§ 117-17. General grant of powers.

CASE NOTES

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. Aug. 11, 2006).

§ 117-18. Specific grant of powers.

CASE NOTES

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. Aug. 11, 2006).

§ 117-18.1. Subsidiary business activities.

CASE NOTES

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. Aug. 11, 2006).

§ 117-20. Encumbrance, sale, etc., of property.

CASE NOTES

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. Aug. 11, 2006).

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 3.

Gasoline and Oil Inspection.

Sec.
119-18. Inspection tax and distribution of the tax proceeds.

ARTICLE 3.

Gasoline and Oil Inspection.

§ 119-18. Inspection tax and distribution of the tax proceeds.

(a) Tax. — An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of G.S. 105-449.90.

(1) Motor fuel.
(2) Alternative fuel used to operate a highway vehicle.
(3) Kerosene.

(a1) Deferred Payment. — A licensed kerosene distributor that buys kerosene from a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes has the right to defer payment of the inspection tax until the supplier is required to remit the tax to this State or another state. A licensed kerosene distributor that pays the tax due a supplier licensed under that Part by the date the supplier must pay the tax to the State may deduct from the amount due a discount in the amount set in G.S. 105-449.93.

(b) Proceeds. — The proceeds of the inspection tax levied by this section shall be applied first to the costs of administering this Article and Subchapter V of Chapter 105 of the General Statutes. The remainder of the proceeds shall be credited on a monthly basis to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is at least five million dollars ($5,000,000), one-half of the remainder of the proceeds shall be credited to the Noncommercial Fund and one-half of the remainder of the proceeds shall be credited to the Commercial Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is less than this threshold amount, all of the remainder of the proceeds shall be credited to the Noncommercial Fund.

(c) No Local Tax. — No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene and motor fuel. (1917, c. 166, s. 4; C.S., s. 4856; 1933, c. 544, s. 5; 1937, c. 425, s. 5; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1985, c. 602, s. 2; 1991, c. 636, s. 12; 1991 (Reg. Sess., 1992), c. 913, s. 12; 1993, c. 402, s. 8; 1995, c. 390, s. 23; 1995 (Reg. Sess., 1996), c. 647, s. 55; 2003-349, ss. 10.15, 10.16; 2006-162, s. 15(e).)

Editor's Note. — Session Laws 2006-162, s. 33, provides, in part, that: "An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007."

Effect of Amendments. —

Session Laws 2006-162, s. 15(e), effective January 1, 2007, and applicable to motor fuel purchased on or after that date, in subsection (a), substituted "on the same date as a monthly return due under G.S. 105-449.90" for "by the 22nd of each month" in the middle of the next-to-last sentence, and substituted "G.S. 105-449.90" for "G.S. 105-449.100" at the end of the last sentence.

Chapter 120.

General Assembly.

Article 1A.

Legislative Retirement System.

Sec.
120-4.21. Service retirement benefits.
120-4.22A. Post-retirement increases in allowances.

Article 7.

Legislative Services Commission.

120-32. Commission duties.
120-32.1. Use and maintenance of buildings and grounds.
120-32.6. Certain employment authority.

Article 7A.

Fiscal Research Division.

120-36.2. Organization.
120-36.6. (Effective until July 1, 2007) Legislative Fiscal Research staff participation.
120-36.6. (Effective July 1, 2007) Legislative Fiscal Research staff participation.

Article 8.

Elected Officers.

120-37. Elected officers; salaries; staff.

Article 9A.

Legislative Branch Lobbying [Repealed].

120-47.1 through 120-47.12. [Repealed.]

Article 12D.

Environmental Review Commission.

120-70.44. Additional powers.

Article 12F.

Joint Legislative Commission on Seafood and Aquaculture.

120-70.63. Additional powers.
120-70.106. Purpose and powers of Committee.

Article 13.

Joint Legislative Commission on Governmental Operations.

120-76. Powers and duties of the Commission.

Article 14.

Legislative Ethics Act.

Part 1. Code of Legislative Ethics.

Sec.
120-85. [Repealed.]
120-85.1. Definitions.
120-86. Bribery, etc.
120-86.1. Personnel-related action unethical.
120-87. Disclosure of confidential information.
120-88. [Repealed.]

Part 2. Statement of Economic Interest.

120-89 through 120-98. [Repealed.]

Part 3. Legislative Ethics Committee.

120-99. Creation; composition.
120-101. Quorum; expenses of members.
120-102. Powers and duties of Committee.
120-103. [Repealed.]
120-103.1. Investigations by the Committee.
120-104. Advisory opinions.
120-105. Continuing study of ethical questions.
120-123. Service by members of the General Assembly on certain boards and commissions.

Article 17.

Confidentiality of Legislative Communications.

120-129. Definitions.

Article 20.

Joint Legislative Commission on Municipal Incorporations.

Part 1. Organization.

120-161. Facilities and staff.

Article 23.

The Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services.

120-204 through 120-207. [Repealed.]

Article 26.

Joint Legislative Oversight Committee on Information Technology.

120-231. Committee duties; reports.

Article 27.

The Joint Legislative Oversight Committee On Mental Health, Developmental Disabilities, and Substance Abuse Services.

Sec.
120-244. Committee authority.

Article 29.

Joint Legislative Oversight Committee on Capital Improvements.

120-259. Purpose and powers of the Committee.

Article 32.

Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program.

120-275. (Effective until June 30, 2015) Commission established.
Sec.
120-276. (Effective until June 30, 2015) Membership; terms.
120-277. (Effective until June 30, 2015) Duties of the Commission.
120-278. (Effective until June 30, 2015) Department of Transportation reporting.
120-279. (Effective until June 30, 2015) Organization of Commission.

ARTICLE 1A.

Legislative Retirement System.

§ 120-4.21. Service retirement benefits.

(a) Eligibility; Application. — Any member may retire with full benefits who has reached 65 years of age with five years of creditable service. Any member may retire with reduced benefits who has reached the age of 50 years with 20 years of creditable service or 60 years with five years of creditable service. The member shall make written application to the Board of Trustees to retire on a service retirement allowance on the first day of the particular calendar month he designates. The designated date shall be no less than one day nor more than 90 days from the filing of the application. During this period of notification, a member may separate from service without forfeiting his retirement benefits.

(b) Computation. — Upon retirement from service in accordance with subsection (a) of this section before July 1, 1990, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four percent (4%) of his "highest annual salary," multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent (¼ of 1%) for each month his retirement date precedes his 65th birthday.

(b1) Computation. — Upon retirement from service in accordance with subsection (a) of this section on or after July 1, 1990, but before February 1, 1995, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his "highest annual salary," multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent (¼ of 1%) for each month his retirement date precedes his 65th birthday.

(b2) Computation. — Upon retirement from service in accordance with subsection (a) of this section on or after February 1, 1995, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his "highest annual salary", multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent (¼ of 1%) for each month his retirement date precedes his 65th birthday.

(3) For a member whose retirement date occurs on or after his 50th birthday and before his 60th birthday and upon completion of 20 years of creditable service, computation as in subdivision (2) of this subsection, reduced by the same percentage as provided for in Article 1 of Chapter 135 of the General Statutes.

(c) Limitations Applicable to Members Retiring Before September 1, 2005. — In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his "highest annual salary".

(d) Limitations Applicable to Members Retiring on or After September 1, 2005. — In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of the member's "highest annual salary" nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system. (1993 (Reg. Sess., 1994), c. 769, s. 7.30(p); 2001-424, s. 32.30(b); 2005-276, s. 29.30A(j); 2006-226, ss. 23(a), (b).)

Effect of Amendments. —

Session Laws 2006-226, s. 23(a), (b), effective August 10, 2006, in the former first version of subsection (c), substituted "Limitations Applicable to Members Retiring Before September 1, 2005" for "Limitations" in the subsection catchline; recodified the former second version of subsection (c) as subsection (d); and in subsection (d), substituted "Limitations Applicable to Members Retiring on or After September 1, 2005" for "Limitations" in the subsection catchline.

§ 120-4.22A. Post-retirement increases in allowances.

(a) Retired members and beneficiaries of the Retirement System shall receive post-retirement increases in allowances on the same basis as post-retirement increases in allowances are provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System.

(b) In accordance with subsection (a) of this section, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1986, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(d) In accordance with subsection (a) of this section, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1988, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(e) In accordance with subsection (a) of this section, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1989, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss).

(g) In accordance with subsection (a) of this section, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1992, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1992 and June 30, 1992.

(h) In accordance with subsection (a) of this section, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1993, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on January 1, 1993. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1993, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1993, and June 30, 1993.

(i) In accordance with subsection (a) of this section, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1994, shall be increased by three and one-half percent (3.5%) of the allowance payable on January 1, 1994. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1994, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1994, and June 30, 1994.

(j) In accordance with subsection (a) of this section, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1995, shall be increased by two percent (2%) of the allowance payable on January 1, 1995. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1995, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1995, and June 30, 1995.

(k) In accordance with subsection (a) of this section, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1996, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on January 1, 1996. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1996, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1996, and June 30, 1996.

(*l*) In accordance with subsection (a) of this section, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1997, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1997, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1997, and June 30, 1997.

(m) In accordance with subsection (a) of this section, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1998, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1998, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1998, and June 30, 1998.

(n) In accordance with subsection (a) of this section, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1999, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1999, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1999, and June 30, 1999.

(o) In accordance with subsection (a) of this section, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2000, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2000, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2000, and June 30, 2000.

(p) In accordance with subsection (a) of this section, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2001, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2001, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2001, and June 30, 2001.

(q) In accordance with subsection (a) of this section, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2002, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2002, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2002, and June 30, 2002.

(r) In accordance with subsection (a) of this section, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2003, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2003, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2003, and June 30, 2003.

(s) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2004, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2004, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2004, and June 30, 2004.

(t) In accordance with subsection (a) of this section, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2005, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2005, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2005, and June 30, 2005.

(u) In accordance with subsection (a) of this section, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2006, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2006, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2006, and June 30, 2006. (1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d); 1987 (Reg. Sess., 1988), c. 1086, s. 22(d); 1989, c. 752, s. 41(d); 1989 (Reg. Sess., 1990), c. 1077, s. 11; 1991 (Reg. Sess., 1992), c. 900, s. 53(d); 1993, c. 321, s. 74(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(k); 1995, c. 507, s. 7.22(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(c); 1997-443, s. 33.22(f); 1998-153, s. 21(c); 1999-237, s. 28.23(c); 2000-67, s. 26.20(f); 2001-424, s. 32.22(c); 2002-126, s. 28.8(d); 2003-284, s. 30.17(c); 2004-124, s. 31.17(c); 2005-276, s. 29.25(c); 2006-66, s. 22.18(b).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 22.18(b), effective July 1, 2006, added subsection (u).

Article 7.

Legislative Services Commission.

§ 120-32. Commission duties.

The Legislative Services Commission is hereby authorized to:

(1) Determine the number, titles, classification, functions, compensation, and other conditions of employment of the joint legislative service employees of the General Assembly, including but not limited to the following departments:
   a. Legislative Services Officer and personnel,
   b. Electronic document writing system,
   c. Proofreaders,
   d. Legislative printing,
   e. Enrolling clerk and personnel,
   f. Library,
   g. Research and bill drafting,
   h. Printed bills,
   i. Disbursing and supply;

   Temporary employees of the General Assembly are exempt from the provisions of G.S. 135-3(8)c., as to compensation earned in that status.

(2) Determine the classification and compensation of employees of the respective houses other than staff elected officers; however, the hiring of employees of each house and their duties shall be prescribed by the rules and administrative regulations of the respective house;

(3) Acquire and dispose of furnishings, furniture, equipment, and supplies required by the General Assembly, its agencies and commissions and maintain custody of same between sessions. It shall be a Class 1 misdemeanor for any person(s) to remove any state-owned furniture, fixtures, or equipment from the State Legislative Building for any purpose whatsoever, except as approved by the Legislative Services Commission;

(4) Contract for services required for the operation of the General Assembly, its agencies, and commissions; however, any departure from

established operating procedures, requiring a substantial expenditure of funds, shall be approved by appropriate resolution of the General Assembly;

a. Provide for engrossing and enrolling of bills,

b. Appoint an enrolling clerk to act under its supervision in the enrollment and ratification of acts;

a. Provide for the duplication and limited distribution of copies of ratified laws and joint resolutions of the General Assembly and forward such copies to the persons authorized to receive same,

b. Maintain such records of legislative activities and publish such documents as it may deem appropriate for the operation of the General Assembly;

a. Provide for the indexing and printing of the session laws of each regular, extra or special session of the General Assembly and provide for the printing of the journal of each house of the General Assembly,

b. Provide and supply to the Secretary of State such bound volumes of the journals and session laws and of these publications in electronic format as may be required by the Secretary of State to be distributed under the provisions of G.S. 147-45, 147-46.1 and 147-48.

(8) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 40(c).

(9) To establish a bill drafting division to draft bills at the request of members or committees of the General Assembly.

(10) To select the locations for buildings occupied by the General Assembly, and to name any building occupied by the General Assembly.

(11) **(Effective until July 1, 2007)** To specify the uses within the General Assembly budget of funds appropriated to the General Assembly which remain available for expenditure after the end of the biennial fiscal period, and to revert funds under G.S. 143-18.

(11) **(Effective July 1, 2007)** To specify the uses within the General Assembly budget of funds appropriated to the General Assembly which remain available for expenditure after the end of the biennial fiscal period, and to revert funds under G.S. 143C-1-2.

(12) Provide insurance to provide excess indemnity for any occurrence which results in a claim against any member of the General Assembly, as provided in G.S. 143-300.2 through G.S. 143-300.6. That insurance may not provide for any indemnity to be payable for any claim not covered by the above cited statutes, nor for any criminal act by a member, nor for any act committed by a member or former member prior to the inception of insurance.

(13) Provide insurance to provide excess indemnity for any occurrence that results in a claim against any employee, officer, or committee, subcommittee, or commission member in the legislative branch other than a member of the General Assembly, as provided in G.S. 143-300.2 through G.S. 143-300.6. That insurance may not provide for any indemnity to be payable for any claim not covered by the above cited statutes, nor for any criminal act, nor for any act committed prior to the inception of insurance. (1969, c. 1184, s. 2; 1971, c. 685, s. 2; c. 1200, s. 8; 1977, c. 802, s. 50.60; 1981 (Reg. Sess., 1982), c. 1191, s. 67; 1983 (Reg. Sess., 1984), c. 1034, s. 182; 1985, c. 479, s. 176(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 40(c); 1993, c. 539, s. 912; 1994, Ex. Sess., c. 24, s. 14(c); 2001-424, s. 32.21A(a); 2001-513, s. 16(c); 2006-203, s. 59.)

Subdivision (11) Set Out Twice. — The first version of subdivision (11) set out above is effective until July 1, 2007. The second version of subdivision (11) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 59, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-1-2" for "G.S. 143-18" in subdivision (11).

§ 120-32.1. Use and maintenance of buildings and grounds.

(a) The Legislative Services Commission shall:

(1) Establish policy for the use of the State legislative buildings and grounds;

(2) Maintain and care for the State legislative buildings and grounds, but the Commission may delegate the actual work of the maintenance of those buildings and grounds to the Department of Administration, which shall perform the work as delegated;

(3) Provide security for the State legislative buildings and grounds;

(4) Allocate space within the State legislative buildings and grounds; and

(5) Have the exclusive authority to assign parking space in the State legislative buildings and grounds.

(b) The Legislative Services Officer shall have posted the rules adopted by the Legislative Services Commission under the authority of this section in a conspicuous place in the State Legislative Building and the Legislative Office Building. The Legislative Services Officer shall have filed a copy of the rules, certified by the chairman of the Legislative Services Commission, in the office of the Secretary of State and in the office of the Clerk of the Superior Court of Wake County. When so posted and filed, these rules shall constitute notice to all persons of the existence and text of the rules. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who knowingly violates any of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor. Any person, firm, corporation, partnership or association who combines, confederates, conspires, aids, abets, solicits, urges, instigates, counsels, advises, encourages or procures another or others to knowingly violate any of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor.

(c) The Legislative Services Commission may cause to be removed at the owner's expense any vehicle parked in the State legislative buildings and grounds in violation of the rules of the Legislative Services Commission and may cause to be removed any vehicle parked in any State-owned parking space leased to an employee of the General Assembly where the vehicle is parked without the consent of the employee to whom the space is leased.

(d) For the purposes of this section, the term "State legislative buildings and grounds" means:

(1) At all times:

a. The State Legislative Building;

a1. Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998.

a2. The areas between the outer walls of the State Legislative Building and the far curbline of those sections of Jones, Wilmington, Salisbury, and Lane Streets that border the land on which it is situated;

b. The Legislative Office Building, which shall include the following areas:

1. The garden area and outer stairway;
2. The loading dock area bounded by the wall on the east abutting the Halifax Street Mall, the southern edge of the southernmost exit lane on Salisbury Street for the parking deck, and the Salisbury Street sidewalk;
3. The area between its outer wall and the near curbline of that section of Lane Street that borders the land on which it is situated; and
4. The area bounded by its western outer wall, the extension of a line along its northern outer wall to the middle of Salisbury Street, following the middle line of Salisbury Street to the nearest point of the intersection of Lane and Salisbury Streets, and thence east to the near curbline of the Legislative Office Building at its southwestern corner;

c. Any State-owned parking lot which is leased to the General Assembly;

d. The bridge between the State Legislative Building and the Halifax Street Mall;

e. A portion of the brick sidewalk surface area of the Halifax Street Mall, described as follows: beginning at the northeast corner of the Legislative Office Building, thence east across the brick sidewalk to the inner edge of the sidewalk adjacent to the grassy area of the Mall, thence south along the inner edge of the sidewalk to the southwest outer corner of the grassy area of the Mall, thence east along the inner edge of the sidewalk adjacent to the southern outer edge of the grassy area of the Mall to a point north of the northeast corner of the pedestrian surface of the Lane Street pedestrian bridge, thence south from that point to the northeast corner of the pedestrian surface of the bridge, thence west along the southern edge of the brick sidewalk area of the Mall to the southeast corner of the Legislative Office Building, thence north along the east wall of the Legislative Office Building, to the point of beginning; and

f. From the center of Lane Street to the far curbline on the south side of the street; between the western edge of the Lane Street driveway to the gardens behind the State Records Center, and Wilmington Street.

(2) Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998. (1973, c. 99, s. 1; 1975, c. 145, s. 3; 1981, c. 772, ss. 3, 4; 1991 (Reg. Sess., 1992), c. 1044, s. 7(a); 1993, c. 539, s. 913; 1994, Ex. Sess., c. 24, s. 14(c); 1996, 2nd Ex. Sess., c. 18, ss. 8(c), 8.1; 1998-156, s. 1; 2003-284, s. 19B.2; 2006-264, s. 60.)

Effect of Amendments. — Session Laws 2006-264, s. 60, effective August 27, 2006, in subdivision (d)(1)b.2., substituted "Halifax Street Mall" for "State Government Mall"; in subdivision (d)(1)d., substituted "Halifax Street Mall" for "State Governmental Mall", and deleted "and" from the end; in subdivision (d)(1)e., substituted "Halifax Street Mall" for "State Government Mall", "grassy area of the Mall, thence east along the inner edge of the sidewalk adjacent to the southern outer edge of the grassy area of the Mall" for "Mall water fountain, thence east along the southern outer edge of the fountain", added "and" at the end; and added subdivision (d)(1)f.

§ 120-32.6. Certain employment authority.

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly. (2006-201, s. 3.)

Editor's Note. — Session Laws 2006-201, s. 25, made this section effective October 1, 2006, and applicable to covered persons and legislative employees, to gifts received, to acts and conflicts of interest that arise, and to offenses committed, on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

ARTICLE 7A.

Fiscal Research Division.

§ 120-36.2. Organization.

(a) The Legislative Services Commission shall appoint a Director of Fiscal Research, who shall serve at the pleasure of the Commission. The Director of Fiscal Research shall be responsible to the Legislative Services Officer in the performance of his duties.

(b) The Director of Fiscal Research shall assign the duties and supervise and direct the activities of the employees of the Division.

(c) The Director and employees of the Division shall receive salaries that shall be fixed by the Commission, shall receive the travel and subsistence allowances fixed by G.S. 138-6 and 138-7, and shall be entitled to the other benefits available to State employees. (1971, c. 659, s. 1; 2006-259, s. 22.)

Effect of Amendments. — Session Laws 2006-259, s. 22, effective August 23, 2006, substituted "appoint" for "elect" in the first sentence of subsection (a); and deleted "shall appoint and may remove, after consultation with the Legislative Services Officer and subject in each case to the approval of the Commission, the professional and clerical employees of the Division. He" following "The Director of Fiscal Research" in subsection (b).

§ 120-36.6. (Effective until July 1, 2007) Legislative Fiscal Research staff participation.

Legislative fiscal research staff members may attend all meetings of the Advisory Budget Commission and all hearings conducted by or for the Commission, and may accompany the Commission to inspect the facilities of the State. The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the Board of Awards and Council of State, unless the Board or Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Board, Commission or Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Board, Commission, or Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the Board, Commission, or

Council. (1971, c. 659, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 177.1; 1996, 2nd Ex. Sess., c. 18, s. 8(d).)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 120-36.6.

§ 120-36.6. (Effective July 1, 2007) Legislative Fiscal Research staff participation.

The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the Board of Awards and Council of State, unless the Board or Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Board or Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Board or Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the Board or Council. (1971, c. 659, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 177.1; 1996, 2nd Ex. Sess., c. 18, s. 8(d); 2006-203, s. 60.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 120-36.6.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 60, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former first sentence, which read: "Legislative fiscal research staff members may attend all meetings of the Advisory Budget Commission and all hearings conducted by or for the Commission, and may accompany the Commission to inspect the facilities of the State."; and substituted "Board or Council" for "Board, Commission, or Council" three times.

ARTICLE 8.

Elected Officers.

§ 120-37. Elected officers; salaries; staff.

(a) At the convening of the first session of the General Assembly following each biennial election of members of the General Assembly, each house shall elect a principal clerk for a term of two years, subject to the condition that each officer shall serve at the pleasure of the house that elected him or her and until his or her successor is elected. The reading clerk and sergeant-at-arms of the Senate shall serve for terms of two years, subject to the condition that each serves at the pleasure of the Senate and until the officer's successor is elected. The reading clerk and sergeant-at-arms of the House of Representatives shall serve as provided in the rules of the House.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of three hundred forty-five dollars ($345.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus

G.S. 120-37(c) is set out twice. See note.

mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only.

(c) **(Effective until July 1, 2007)** The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ninety-seven thousand four hundred two dollars ($97,402) payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, for additional employment duties beyond those provided by the rules of their House. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(c) **(Effective July 1, 2007)** The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ninety-seven thousand four hundred two dollars ($97,402) payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, for additional employment duties beyond those provided by the rules of their House. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(d) The Legislative Services Commission may authorize additional full-time staff employees of the office of each principal clerk. The Speaker may assign to the Principal Clerk of the House additional duties for the periods between sessions and during recesses of the General Assembly. The President pro tempore of the Senate may assign to the Principal Clerk of the Senate additional duties for the periods between sessions and during recesses of the General Assembly.

(e) The principal clerks and the sergeants-at-arms may, upon authorization of the Legislative Services Commission, employ temporary assistants to prepare for each legislative session, serve during the session, and perform necessary duties following adjournment.

(f) Following adjournment sine die of each session of the General Assembly, each principal clerk shall retain in his office for a period of two years every bill and resolution considered by but not enacted or adopted by his house, together with the calendar books and other records deemed worthy of retention. At the end of two years, these materials shall be turned over to the Office of Archives and History of the Department of Cultural Resources for ultimate retention or disposition. (1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189; 1985 (Reg. Sess., 1986), c. 1014, ss. 30, 31; 1987, c. 738, ss. 16, 17; 1987 (Reg. Sess., 1988), c. 1086, ss. 10, 11; c. 1100, s. 16(c); 1989, c. 752, ss. 27, 28; 1991, c. 756, s. 34; 1991 (Reg. Sess., 1992), c. 900, ss. 36, 37; 1993, c. 321, ss. 53, 54; 1993 (Reg. Sess., 1994), c. 769, ss. 7.6, 7.7; 1995, c. 507, ss. 7.9, 7.10; 1996, 2nd Ex. Sess., c. 18, ss. 28.7, 28.8; 1997-443, ss. 33.13, 33.14; 1998-153, ss. 10, 11; 1998-212, s. 28.7(a); 1999-237, ss. 28.7, 28.8; 2000-67, ss. 26.7, 26.8; 2001-424, ss. 32.8, 32.9; 2002-159, s. 35(f); 2004-124, ss. 31.8(b), 31.9(b); 2005-276, ss. 29.8, 29.9, 19B.1; 2005-345, s. 40; 2006-66, ss. 22.8, 22.9; 2006-203, s. 61.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 2007. The second version of subsection (c) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-66, ss. 22.8 and 22.9, effective July 1, 2006, substituted "three hundred forty-five dollars ($345.00)" for "three hundred twenty-seven dollars ($327.00)" in the first sentence of subsection (b); and substituted "ninety-seven thousand four hundred two dollars ($97,402)" for "ninety-two thousand three hundred twenty-four dollars ($92,324)" in the first sentence of subsection (c).

Session Laws 2006-203, s. 61, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "and Advisory Budget Commission" following "to the Governor" in the next-to-last sentence of subsection (c).

ARTICLE 9A.

Legislative Branch Lobbying [Repealed].

§§ 120-47.1 through 120-47.12: Repealed by Session Laws 2006-201, s. 17, effective January 1, 2007.

Cross References. — For current provisions regarding Lobbying, see Chapter 120C.

Editor's Note. — Session Laws 2006-201, ss. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

G.S. 120-47.7B, as enacted by Session Laws 2005-456, and as amended by Session Laws 2006-201, s. 16, was effective from August 4, 2006, to January 1, 2007. As enacted the section read: "§ 120-47.7B. Powers and duties of the Secretary of State.

"(a) The Secretary of State shall perform systematic reviews of reports required to be filed under G.S. 120-47.6 and G.S. 120-47.7 on a regular basis to assure complete and timely disclosure of expenditures.

"(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

"(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.".

Session Laws 2006-264, s. 99.4(a), effective January 1, 2007, amended G.S. 120-47.7B, by adding subsection (d), which read: "Any person, when in doubt about the applicability and interpretation of this article in a particular context, may submit in writing the facts of the situation to the Secretary of State with a request for a written opinion to establish the standard of duty regarding compliance with this Article. Any such opinion so issued shall specifically refer to this subsection. No person shall be subject to prosecution or civil action for failure to comply with this Article if the person has relied upon and complied with a written opinion issued by the Secretary of State under this subsection." Due to the repeal of Article 9A by Session Laws 2006-201, s. 17, effective January 1, 2007, the amendment has not been given effect, and the section is set out above as repealed.

§ 120-70.1. Committee established.

Study — North Carolina Utilities Commission Regulation of Production and Distribution of Gasoline and Other Related Petroleum Products. — Session Laws 2006-

206, ss. 4A.1, 4A.2, provide: "The General Assembly finds that the cost, availability, and distribution of gasoline and other related petroleum products have become as critical to the general public and the State's economy as electric power, natural gas, and other public utilities currently regulated by the North Carolina Utilities Commission. Accordingly, the Joint Legislative Utility Review Committee established under Article 12A of Chapter 120 of the General Statutes shall study the desirability and the feasibility of the North Carolina Utilities Commission regulating the production and distribution of gasoline and other related petroleum products as a public utility.

"No later than February 1, 2007, the Joint Legislative Utility Review Committee shall submit a report, including its findings and any recommendations or legislative proposals, to the 2007 General Assembly."

ARTICLE 12D.

Environmental Review Commission.

§ 120-70.41. Commission established.

Legislative Commission on Global Climate Change. — Session Laws 2005-442, ss. 1 to 12, as amended by Session Laws 2006-73, s. 1, provides: "Commission Established; Membership. — The Legislative Commission on Global Climate Change is hereby established. The Commission shall consist of 34 members as follows:

"Cochairs. — The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

"Quorum. — A quorum of the Commission shall consist of 18 members.

"Vacancies. — Any vacancy on the Commission shall be filled by the original appointing authority.

"Purpose and Duties. — The Commission shall have the following purposes and duties:

"(1) The Commission shall conduct an in-depth examination of issues related to global climate change. This examination shall include all of the following:

"a. A review of current scientific literature on the possible natural and anthropogenic causes of global climate change.

"b. A review of actions taken by the federal government and by other states to address global warming.

"c. An examination of the emissions of greenhouse gases from within the State and the extent to which reductions in the emissions of these gases in the State, region, nation, and worldwide could be expected to affect global climate change.

"d. An evaluation of the economic opportunities for the State that may result from international, national, and State action to address global climate change and the emerging carbon market.

"e. The potential impacts of global climate change on the citizens, natural resources, and economy of the State, including agriculture, travel and tourism, recreation, coastal real estate, insurance, and other economic sectors.

"f. The costs of any action taken by the State to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

"g. The benefits of any action taken by or within the State or other states and at the national or international levels to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

"(2) If, in the course of its examination, the Commission determines that it would be appropriate and desirable for the State to establish a global warming pollutant reduction goal, the Commission may develop a recommended global warming pollutant reduction goal for the State.

"(3) In conducting its examination of global climate change, the Commission shall consider and integrate the findings and recommendations of the study of issues related to the development and implementation of standards and plans to control emissions of carbon dioxide required by Section 13 of S.L. 2002-4.

"Additional Duties. — The Commission may work cooperatively with other state and national governments to organize a forum on global climate change, including its causes, impacts, challenges, and opportunities in the southeastern United States. The Commission may also work cooperatively with other State agencies with respect to the agencies' areas of responsibilities regarding greenhouse gas emissions and climate change.

"Expenses of Members. — Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

"Consultants. — The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

"Meetings. — The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"Reports. — The Commission shall submit an interim report to the General Assembly and the Environmental Review Commission no later than 15 January 2007 and may submit interim reports at other times at its discretion. The Commission shall submit a final report, including any findings and recommendations, to the General Assembly and the Environmental Review Commission on or before 15 April 2008, at which time the Commission shall terminate.

"Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part."

Biofuels Industry Strategic Plan Work Group. — Session Laws 2006-206, ss. 3.1, 3.2, provide: "Section 3.1. There is established the Biofuels Industry Strategic Plan Work Group. The purpose of the Work Group is to develop a strategic plan for expansion of biofuels as an industry in North Carolina. The Work Group shall include representatives of the College of Agriculture and Life Sciences at North Carolina State University, the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University, the North Carolina Biotechnology Center, and the Rural Economic Development Center, Inc. In developing this strategic plan, the Work Group shall delineate the increasing role of biotechnology in the development of biofuels and may consult with all of the following:

"(1) The Department of Administration.

"(2) The Department of Agriculture and Consumer Services.

"(3) The Department of Commerce.

"(4) The Department of Environment and Natural Resources.

"(5) The Department of Transportation.

"(6) The University of North Carolina System.

"(7) The Community College System.

"(8) The North Carolina Solar Center at North Carolina State University.

"(9) The North Carolina Farm Bureau Federation.

"(10) The North Carolina State Grange.

"(11) The North Carolina Agribusiness Council.

"(12) The North Carolina Forestry Association.

"(13) Representatives of private industry that are engaged in biotechnology and the biofuels industry.

"(14) Any other entity that the Biofuels Industry Strategic Plan Work Group deems appropriate, particularly entities that are engaged in biotechnology and the biofuels industry."

"Section 3.2. The Biofuels Industry Strategic Plan Work Group shall submit an interim report on the development of the strategic plan, including any preliminary findings, recommendations, and legislative proposals, to the Environmental Review Commission no later than 15 January 2007. The Biofuels Industry Strategic Plan Work Group shall submit a final report on the development of the strategic plan, including any findings, recommendations, and legislative proposals, to the Environmental Review Commission no later than 1 April 2007."

§ 120-70.44. Additional powers.

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1; 1989, c. 784, s. 5; 2006-255, s. 3.1.)

Effect of Amendments. — Session Laws 2006-255, s. 3.1, effective August 23, 2006, added the subsection (a) and (b) designations to the previously undesignated paragraphs; and added subsection (c).

Article 12F.

Joint Legislative Commission on Seafood and Aquaculture.

§ 120-70.63. Additional powers.

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. (1989, c. 802, s. 12.1; 2005-386, s. 1.9; 2006-255, s. 3.2.)

Effect of Amendments. —

Session Laws 2006-255, s. 3.2, effective August 23, 2006, added the subsection (a) designation to the previously undesignated paragraph; and added subsection (b).

Article 12H.

Joint Legislative Education Oversight Committee.

§ 120-70.80. Creation and membership of Joint Legislative Education Oversight Committee.

Editor's Note. —

Session Laws 2006-66, s. 8.3(c), provides: "The Community Colleges System Office shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the College Information System Project."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Article 12J.

Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

§ 120-70.93. Creation and membership of Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

Editor's Note. —

Session Laws 2006-32, s. 4, as amended by Session Laws 2006-187, s. 8, and as amended by Session Laws 2006-259, s. 44(a), provides:

"The Legislative Research Commission shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

"(1) Funding mechanisms;

"(2) Target populations;

"(3) Interagency collaboration at the State and local levels; and

"(4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

"The Commission may report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

ARTICLE 12L.

Revenue Laws Study Committee.

§ 120-70.106. Purpose and powers of Committee.

(a) The Revenue Laws Study Committee may:

(1) Study the revenue laws of North Carolina and the administration of those laws.

(2) Review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable.

(3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.

(4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease.

(c) The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by S.L. 2006-151, has on the issues listed in this section to determine if any changes to the law are needed:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly. (1997-483, s. 14.1; 2006-151, s. 21.)

Editor's Note. — Session Laws 2006-151, s. 21, was codified as subsection (c) of this section, effective January 1, 2007, at the direction of the Revisor of Statutes.

Session Laws 2006-151, s. 20, is a severability clause.

ARTICLE 12N.

Joint Legislative Growth Strategies Oversight Committee.

§ 120-70.120. (Effective until January 16, 2007) Creation and membership of Joint Legislative Growth Strategies Oversight Committee.

Editor's Note. —

Session Laws 2001-491, s. 3.3, as amended by Session Laws 2004-161, s. 3.2, and as amended by Session Laws 2006-248, s. 9.2, makes this Article effective January 15, 2002, and provides that it will expire January 16, 2007. Prior to its expiration on January 16, 2007, the Committee shall report to the General Assembly on its activities conducted pursuant to ss. 3.1 to 3.3 of Session Laws 2001-491.

Session Laws 2006-248, s. 1, provides: "This act shall be known as 'The Studies Act of 2006'."

ARTICLE 13.

Joint Legislative Commission on Governmental Operations.

§ 120-76. Powers and duties of the Commission.

The Commission shall have the following powers:

(1) To conduct program evaluation studies of the various components of State agency activity as they relate to:
  a. Service benefits of each program relative to expenditures;
  b. Achievement of program goals;
  c. Use of indicators by which the success or failure of a program may be gauged; and
  d. Conformity with legislative intent.

(2) To study legislation which would result in new programs with statewide implications for feasibility and need. These studies may be jointly conducted with the Fiscal Research Division of the Legislative Services Commission.

(3) To study on a continuing basis the implementation of State government reorganization with respect to:
  a. Improvements in administrative structure, practices and procedures;
  b. The relative effectiveness of centralization and decentralization of management decisions for agency operation;
  c. Opportunities for effective citizen participation; and
  d. Broadening of career opportunities for professional staff.

(4) To make such studies and reports of the operations and functions of State government as it deems appropriate or upon petition by resolution of either the Senate or the House of Representatives.

(5) To produce routine written reports of findings for general legislative and public distribution. Special attention shall be given to the presentation of findings to the appropriate committees of the Senate and the House of Representatives. If findings arrived at during a study have a potential impact on either the finance or appropriations deliberations, such findings shall immediately be presented to the committees. Such reports shall contain recommendations for appropriate executive action and when legislation is considered necessary to effect change, draft legislation for that purpose may be included. Such reports as are submitted shall include but not be limited to the following matters:

   a. Ways in which the agencies may operate more economically and efficiently;
   b. Ways in which agencies can provide better services to the State and to the people; and
   c. Areas in which functions of State agencies are duplicative, overlapping, or failing to accomplish legislative objectives, or for any other reason should be redefined or redistributed.

(6) To devise a system, in cooperation with the Fiscal Research Division of the Legislative Services Commission, whereby all new programs authorized by the General Assembly incorporate an evaluation component. The results of such evaluations may be made to the Appropriations Committees at the beginning of each regular session.

(7) To evaluate and approve or deny requests from the Department of Transportation regarding the funding of federally eligible construction projects as provided in the fourth paragraph of G.S. 136-44.2.

(8) **(Effective until July 1, 2007)** The Joint Legislative Commission on Governmental Operations shall be consulted by the Governor before the Governor does any of the following:
   a. Makes allocations from the Contingency and Emergency Fund.
   b. Authorizes expenditures in excess of the total requirements of a purpose or program as enacted by the General Assembly and as provided by G.S. 143-23(a1)(3), except for trust funds as defined in G.S. 116-36.1(g).
   c. Proceeds to reduce programs subsequent to a reduction of ten percent (10%) or more in the federal fund level certified to a department and any subsequent changes in distribution formulas.
   d. Takes extraordinary measures under Article III, Section 5(3) of the Constitution to effect necessary economies in State expenditures required for balancing the budget due to a revenue shortfall, including, but not limited to, the following: loans among funds, personnel freezes or layoffs, capital project reversions, program eliminations, and use of reserves. However, if the Committee fails to meet within 10 calendar days of a request by the Governor for its consultation, the Governor may proceed to take the actions he feels are appropriate and necessary and shall then report those actions at the next meeting of the Commission.
   e. Approves a new capital improvement project funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or any combination of funds for the project not specifically authorized by the General Assembly. The budget for each capital project must include projected revenues in an amount not less than projected expenditures.

(8) **(Effective July 1, 2007)** The Joint Legislative Commission on Governmental Operations shall be consulted by the Governor before the Governor does any of the following:
   a. Makes allocations from the Contingency and Emergency Fund.
   b. Authorizes expenditures in excess of the total requirements of a purpose or program as enacted by the General Assembly and as provided by G.S. 143C-6-4.
   c. Proceeds to reduce programs subsequent to a reduction of ten percent (10%) or more in the federal fund level certified to a department and any subsequent changes in distribution formulas.

G.S. 120-76(8) is set out twice. See note.

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d. Takes extraordinary measures under Article III, Section 5(3) of the Constitution to effect necessary economies in State expenditures required for balancing the budget due to a revenue shortfall, including, but not limited to, the following: loans among funds, personnel freezes or layoffs, capital project reversions, program eliminations, and use of reserves. However, if the Committee fails to meet within 10 calendar days of a request by the Governor for its consultation, the Governor may proceed to take the actions he feels are appropriate and necessary and shall then report those actions at the next meeting of the Commission.

e. Approves a new capital improvement project funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or any combination of funds for the project not specifically authorized by the General Assembly. The budget for each capital project must include projected revenues in an amount not less than projected expenditures. (1975, c. 490; 1981, c. 859, s. 87; 1996, 2nd Ex. Sess., c. 18, s. 7.4(a); 1997-443, s. 7.8(e); 2005-276, s. 6.7(a); 2006-203, s. 62.)

Subdivision (8) Set Out Twice. — The first version of subdivision (8) set out above is effective until July 1, 2007. The second version of subdivision (8) set out above is effective July 1, 2007.

Effect of Amendments. —

Session Laws 2006-203, s. 62, effective July 1, 2007, substituted "G.S. 143C-6-4" for "G.S. 143-23(a1)(3), except for trust funds as defined in G.S. 116-36.1(g)" in subdivision (8)b.

ARTICLE 14.

Legislative Ethics Act.

Part 1. Code of Legislative Ethics.

§ 120-85: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before Janaury 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-85.1. Definitions.

As used in this Article, the following terms mean:

(1) Business with which associated. — As defined in G.S. 138A-3.
(2) Confidential information. — As defined in G.S. 138A-3.
(3) Economic interest. — As defined in G.S. 138A-3.
(4) Immediate family. — As defined in G.S. 138A-3.
(5) Legislator. — As defined in G.S. 138A-3.

(6) Nonprofit corporation or organization with which associated. — As defined in G.S. 138A-3.
(7) Vested trust. — As defined in G.S. 138A-3. (2006-201, s. 5.)

Editor's Note. — Session Laws 2006-201, s. 25, makes this section effective January 1, 2007. Prosecutions for offenses or ethics violations committed before Janaury 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-201, s. 23(a), (b) provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

§ 120-86. Bribery, etc.

(a) No person shall offer or give to a legislator or a member of a legislator's immediate family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

(d) Repealed by Session Laws 2006-201, s. 6, effective January 1, 2007.

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under G.S. 120-103.1. (1975, c. 564, s. 1; 1983, c. 780, s. 2; 1993, c. 539, s. 1302; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 19.27(a); 2006-201, s. 6.)

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-201, s. 6, effective January 1, 2007, substituted "family" for "household" near the beginning of subsection (a); deleted former subsection (d) which read: "For the purposes of this section, the term 'legislator' also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office."; and substituted "G.S. 120-103.1" for "G.S. 120-103" at the end of subsection (e).

§ 120-86.1. Personnel-related action unethical.

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in G.S. 120C-100(5), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes. (1997-520, s. 7; 2006-201, s. 20(a).)

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-201, s. 20(a), effective January 1, 2007, substituted "G.S. 120C-100(5)" for "G.S. 120-47.1(4)" in the middle of the section.

§ 120-87. Disclosure of confidential information.

(a) No legislator shall use or disclose in any way confidential information gained in the course of the legislator's official activities or by reason of the legislator's official position that could result in financial gain for: (i) the legislator; (ii) a business with which the legislator is associated; (iii) a nonprofit corporation or organization with which the legislator is associated; (iv) a member of the legislator's immediate household; or (v) any other person.

(b) Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007. (1975, c. 564, s. 1; 2004-199, s. 31(b); 2006-201, s. 4.)

Editor's Note. —

Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-201, s. 4, effective January 1, 2007, deleted former subsection (b) which read: "As used in this section, 'confidential information' means information defined as confidential by statute."

§ 120-88: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before Janaury 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 2. Statement of Economic Interest.

§ 120-89: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before Janaury 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§§ 120-92 through 120-94: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

§ 120-96: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

§ 120-98: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

Part 3. Legislative Ethics Committee.

§ 120-99. Creation; composition.

(a) The Legislative Ethics Committee is created and shall consist of 12 members, six Senators appointed by the President Pro Tempore of the Senate, among them — three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader, and six members of the House of Representatives appointed by the Speaker of the House, among them — three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's appointees. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. However, a cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) Repealed by Session Laws 2006-201, s. 8, effective January 1, 2007. (1975, c. 564, s. 1; 1985, c. 790, s. 6; 1991, c. 739, s. 15; 1995, c. 180, s. 1; 2004-199, s. 31(d); 2006-201, ss. 7, 8.)

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-201, ss. 7 and 8, effective January 1, 2007, in subsection (a), substituted "and shall consist of 12 members" for "to consist of ten members," substituted "six Senators" for "five Senators," substituted "three from a list of six" for "two from a list of four" four times, and substituted "six members of the House of Representatives" for "five members of the House of Representatives"; and deleted former subsection (c), which read: "The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee."

§ 120-101. Quorum; expenses of members.

(a) Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties. (1975, c. 564, s. 1; 1995, c. 180, s. 3; 2006-201, s. 9.)

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-201, s. 9, effective January 1, 2007, added the subsection designations; and substituted "Eight members" for "Six members" at the beginning of subsection (a).

§ 120-102. Powers and duties of Committee.

(a) In addition to the other powers and duties specified in this Article, the Committee may:

(1) through (4) Repealed by Session Laws 2006-201, s. 10, effective January 1, 2007.

(5) Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, and to suggest rules of conduct that shall be adhered to by legislators and legislative employees.

(5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(6a) Review, modify, or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.

(7) Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, investigate and dispose of the matter according to the terms of this Article.

(9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(10) Adopt procedures to implement this Article.

(11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties. (1975, c. 564, s. 1; 1979, c. 864, s. 3; 1991, c. 700, s. 1; 2006-201, s. 10.)

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-201, s. 10, effective January 1, 2007, rewrote the section.

§ **120-103:** Repealed by Session Laws 2006-201, s. 11, effective January 1, 2007.

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-103.1. Investigations by the Committee.

(a) Institution of Proceedings. — On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.

(2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(b) Complaint. —

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(3) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.

(4) Notwithstanding any other provisions of this section, complaints filed with the Committee concerning the conduct of the Lieutenant Governor shall be referred to the State Ethics Commission under Chapter 138A of the General Statutes without investigation by the Committee.

(c) Investigation of Complaints by the Committee. — The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section or initiate an investigation of a complaint or dismiss the complaint. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.

(d) On a referral from the State Ethics Commission, the Committee shall do at least one of the following:

(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.

(2) Conduct further investigations and hearings under this section.

(3) Dismiss the complaint.

(e) Investigation by the Committee of Matters Other Than Complaints. — The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subdivision (j)(2) of this section.

(f) Legislator Cooperation with Investigation. — Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint After Preliminary Inquiry. — If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. — If at the end of its preliminary inquiry, the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. —

- (1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.
- (2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.
- (3) At any hearing held by the Committee:
  - a. Oral evidence shall be taken only on oath or affirmation.
  - b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.
  - c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. — Except as permitted under subsections (b) and (g) of this section, after the hearing, the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

- (1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.
- (2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:
  - a. Issue a public or private admonishment to the legislator.
  - b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.
  - c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.
- (3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. — In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Committee may make public the earlier admonishment and the records and findings related to it.

(*l*) Confidentiality. — Except as provided under subsection (k) of this section, the complaint, response, records, and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records, and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

(n) The Committee shall publish annual statistics on complaints filed with or considered by the Committee, including the number of complaints filed, the number of complaints dismissed, the number of complaints resulting in admonishment, the number of complaints referred to the appropriate house for appropriate action, the number of complaints referred for criminal prosecution, and the number and age of complaints pending action by the Committee. (2006-201, s. 12.)

Editor's Note. — Session Laws 2006-201, s. 25, made this section effective January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

§ 120-104. Advisory opinions.

(a) At the request of any member of the General Assembly, the Committee shall render formal advisory opinions on specific questions involving legislative ethics.

(b) The Committee shall receive and review recommended advisory opinions issued to legislators, except the Lieutenant Governor, by the State Ethics Commission under G.S. 138A-13. The opinion shall not be considered a formal advisory opinion until the advisory opinion is adopted by the Committee. The Committee may modify or overrule the recommended advisory opinions issued to legislators by the State Ethics Commission, and the final action on the opinion by the Committee shall control.

(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under G.S. 138A-13(a).

(d) Staff to the Committee may issue informal, nonbinding advisory opinions under procedures adopted by the Committee.

(e) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators, except the Lieutenant Governor, and these interpretations are binding on all legislators upon publication.

(f) The Committee shall submit its formal advisory opinions to the State Ethics Commission, and the State Ethics Commission shall publish the Committee's opinions under G.S. 138A-13(d).

(g) Except as provided under subsection (f) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission are confidential and not matters of public record. (1975, c. 564, s. 1; 2006-201, s. 13.)

Editor's Note. — Session Laws 2006-201, s. 23(a), (b) provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-201, s. 13, effective January 1, 2007, designated the existing provisions as subsection (a); in subsection (a), inserted "formal" in the middle of the first sentence, and deleted the former last sentence which read: "These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee."; and added subsections (b) through (g).

§ 120-105. Continuing study of ethical questions.

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article and Chapter 138A and Chapter 120C of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government. (1975, c. 564, s. 1; 2006-201, s. 14.)

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-25, provides, in part, that: "Prosecutions for offense or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-201, s. 14, effective January 1, 2007, substituted "and Chapter 138A and Chapter 120C of the General Statutes. The Committee" for "as well as sections to cover the administrative branch of government and" near the middle of the section.

Article 16.

Legislative Appointments to Boards and Commissions.

§ 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

(1) The Board of Agriculture, as established by G.S. 106-2.
(1a) Not effectuated.
(1b) The Rules Review Commission as established by G.S. 143B-30.1.
(2) The Art Museum Building Commission, as established by G.S. 143B-59.

(3) The Governor's Advocacy Council for Persons with Disabilities, as established by G.S. 143B-403.2.
(3a) The State Banking Commission, as established by G.S. 53-92.
(4) The Board of Public Telecommunications Commissioners, as established by G.S. 143B-426.9.
(5) The Board of Transportation, as established by G.S. 143B-350.
(6) The Board of Trustees Teachers' and State Employees' Retirement System, as established by G.S. 135-6.
(6a) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1030, s. 33.
(7) The Coastal Resources Commission, as established by G.S. 113A-104.
(8) The Environmental Management Commission, as established by G.S. 143B-283.
(8a) The Genetic Engineering Review Board, as created by G.S. 106-769.
(9) The State Fire and Rescue Commission, as established by G.S. 58-78-1.
(10) The Public Officers and Employees Liability Insurance Commission, as established by G.S. 58-32-1.
(11) Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 4.
(12) Repealed by Session Laws 1987, c. 71, s. 4.
(13) The North Carolina Criminal Justice Education and Training Standards Commission, as established by G.S. 17C-3.
(14) The North Carolina Housing Finance Agency Board of Directors, as established by G.S. 122A-4.
(15) The North Carolina Seafood Industrial Park Authority, as established by G.S. 113-315.25.
(16) Repealed by Session Laws 1985, c. 479, s. 153(b).
(17) The Board of Trustees of the North Carolina School of Science and Mathematics, as established by G.S. 116-233.
(18) The North Carolina Board of Science and Technology, as established by G.S. 143B-426.30.
(19) Repealed by Session Laws 1989, c. 500, s. 107(b).
(20) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(a).
(21) The Board of Trustees of the University of North Carolina Center for Public Television, as established by G.S. 116-37.1.
(22) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, as established by G.S. 143B-147.
(23) Repealed by Session Laws 1993, c. 501, s. 12.
(24) The North Carolina Alcoholism Research Authority, as established by G.S. 122C-431.
(25) **(For contingent repeal, see editor's note)** The North Carolina Ports Railway Commission, as established by G.S. 143B-469.
(25a) The North Carolina Global TransPark Authority as established under G.S. 63A-3.
(26) The North Carolina State Ports Authority, as established by G.S. 143B-452.
(27) The Property Tax Commission, as established by G.S. 105-288.
(28) The Social Services Commission, as established by G.S. 143B-154.
(29) The North Carolina State Commission of Indian Affairs, as established by G.S. 143B-407.
(30) The Wildlife Resources Commission, as established by G.S. 143-240.
(31) The North Carolina Council for Women, as established by G.S. 143B-393.
(31a) The North Carolina Structural Pest Control Committee, as established by G.S. 106-65.23.

(32) The Board of Trustees of North Carolina Museum of Art, established by G.S. 140-5.13.
(33) The North Carolina Sheriffs' Education and Training Standards Commission, established by G.S. 17E.
(33a) Repealed by Session Laws 1987, c. 738, s. 41(d).
(34) The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, as established by G.S. 143B-426.24.
(34a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(b).
(34b) The North Carolina Housing Partnership, as established by G.S. 122E-4.
(35) The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, as established by G.S. 135-39.
(36) Repealed by Session Laws 2004-199, s. 27(b), effective August 17, 2004.
(37) The State Board of Chiropractic Examiners as established by G.S. 90-139.
(38) The North Carolina Manufactured Housing Board, as established by G.S. 143-143.10.
(39) Repealed by Session Laws 1987, c. 71, s. 4.
(40) The Alarm System Licensing Board, as established by G.S. 74D-4.
(41) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1011, s. 2.1(c).
(42) The Crime Victims Compensation Commission, as established by G.S. 15B-3.
(43) The North Carolina Council on Ocean Affairs, as established by G.S. 143B-390.10.
(44) The Child Care Commission, as established by G.S. 143B-168.3.
(45) Repealed by Session Laws 1995, c. 517, s. 39, effective October 1, 1995.
(45a) The North Carolina Teaching Fellows Commission, as established by G.S. 115C-363.22.
(46) The Board of Directors of the North Carolina Arboretum, as established in G.S. 116-240.
(47) The North Carolina Agricultural Finance Authority, as established by G.S. 122D-4.
(48) Reserved for future codification purposes.
(49) The Northeastern North Carolina Farmers Market Commission as established by G.S. 106-720.
(50) The Southeastern North Carolina Farmers Market Commission as established by G.S. 106-727.
(50a) The North Carolina Board of Dietetics/Nutrition as created by Article 25 of Chapter 90 of the General Statutes.
(51) The State Building Commission, as established by G.S. 143-135.25.
(52) The Commission on School Facility Needs, established by G.S. 115C-489.4.
(53) **(Effective retroactively to September 1, 1997)** The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.51.
(54) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.
(55) Repealed by Session Laws 1998-217, s. 45, effective October 31, 1998.
(56) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.
(57) Repealed by Session Laws 2004-129, s. 35, effective July 1, 2004.
(58) The Appraisal Board created in G.S. 93E-1-5.

(59) Repealed by Session Laws 1997-286, s. 7.

(59a) The North Carolina Principal Fellows Commission established by G.S. 116-74.41.

(60) Repealed by Session Laws 1997-443, s. 8.26b.

(61) The State Health Plan Purchasing Alliance Board, as established by G.S. 143-625.

(62) The Northeastern North Carolina Regional Economic Development Commission, as established by G.S. 158-8.2.

(63) The Teacher Academy Board of Trustees, as established by Section 17.9 of House Bill 229 of the 1995 General Assembly [G.S. 116-30.01].

(63a) The North Carolina Code Officials Qualification Board, as established by G.S. 143-151.9.

(64) A facility authority established under Part 4 of Article 20 of Chapter 160A of the General Statutes.

(64a) The North Carolina Educational Facilities Finance Agency, as established by G.S. 115E-4.

(65) Repealed by Session Laws 1998-217, s. 45.

(66) The Local Government Commission, as established by G.S. 159-3.

(67) The Board of Trustees of the Natural Heritage Trust Fund, as established by G.S. 113-77.8.

(68) The State Personnel Commission.

(69) The North Carolina Partnership for Children, Inc., established pursuant to Part 10B of Article 3 of Chapter 143B of the General Statutes, and all local partnerships established pursuant to this Part.

(70) The Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.

(71) The Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.

(72) The North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes.

(73) Repealed by Session Laws 2000-149, s. 5, as amended by Session Laws 2003-425, s. 3, effective December 31, 2003.

(74) The North Carolina Respiratory Care Board as created by Article 37 of Chapter 90 of the General Statutes.

(75) The North Carolina Turnpike Authority.

(76) The Economic Investment Committee established under G.S. 143B-437.54.

(77) **(Repealed effective December 31, 2011)** The e-NC Authority created in Part 2F of Article 10 of Chapter 143B of the General Statutes.

(78) The North Carolina State Lottery Commission, as established in Chapter 18C of the General Statutes. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, ss. 2, 6; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479, s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c); 1985 (Reg. Sess., 1986), c. 1011, ss. 2, 2.1(c); c. 1014, ss. 63(h), 99; c. 1028, s. 33; c. 1029, s. 14.3; 1987, c. 71, ss. 4, 5; c. 622, s. 15; c. 641, s. 21; c. 738, s. 41(d); c. 765, s. 2; c. 841, s. 4; c. 850, s. 18; 1987 (Reg. Sess., 1988), c. 993, s. 27; 1989, c. 139, s. 2; c. 168, s. 8; c. 239, s. 7; c. 500, ss. 107(b), 109(g); c. 625, s. 24; c. 727, s. 140; c. 750, s. 4; c. 752, s. 148(c); 1989 (Reg. Sess., 1990), c. 827, s. 14; c. 1024, s. 23(a)-(d); c. 1074, s. 32(a)-(c); 1991, c. 134, s. 1; c. 301, s. 1; c. 668, s. 2; c. 749, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 14(f); c. 1007, s. 37; c. 1030, ss. 33, 51.14; c. 1044, s. 10(b); 1993, c. 321, ss. 85(d), 135(b), 309.1(b); c. 405, s. 18.1; c. 419, s. 13.1;

c. 501, s. 12; c. 529, s. 3.9; 1993 (Reg. Sess., 1994), c. 777, s. 4(f); 1995, c. 324, s. 17.9(i); c. 458, s. 2; c. 490, ss. 12(b), 17(b), 21(b), 30(b), 37(b); c. 517, s. 39(d); 1997-286, s. 7; 1997-443, s. 8.26; 1997-506, s. 42; 1998-181, s. 3; 1998-212, s. 12.37B(e); 1998-217, s. 45; 1998-224, s. 19(c); 1998-225, s. 1.2; 2000-147, s. 5; 2000-148, s. 2; 2000-149, ss. 2, 5; 2000-162, s. 2; 2001-474, s. 13; 2001-487, s. 21(b); 2002-126, s. 6.6(b); 2002-133, s. 5; 2002-172, s. 2.5; 2003-416, s. 2; 2003-425, ss. 2, 3; 2004-129, s. 35; 2004-199, s. 27(b); 2005-344, s. 8; 2006-66, s. 12.3(a).)

Editor's Note. —

Session Laws 2003-425, s. 4, as amended by Session Laws 2006-66, s. 12.3(a), provides: "Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. The e-NC Authority created in this act is dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective December 31, 2011."

Session Laws 2006-66, s. 12.3(c), provides: "Of the funds appropriated in this act to the Department of Commerce, the sum of five hundred thousand dollars ($500,000) shall be allocated to the e-NC Authority.

"The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

"The e-NC Authority shall report to the 2007 General Assembly on the following:

"(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access high-speed Internet.

"(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

"(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

"The e-NC Authority shall, by September 30, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

ARTICLE 17.

Confidentiality of Legislative Communications.

§ 120-129. Definitions.

As used in this Article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions

who are paid by State funds, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, ss. 1-3; 2006-264, s. 29(i).)

Effect of Amendments. — Session Laws 2006-264, s. 29(i), effective August 27, 2006, substituted "School of Government at the University of North Carolina at Chapel Hill" for "Institute of Government" near the end of subdivision (2).

ARTICLE 20.

Joint Legislative Commission on Municipal Incorporations.

Part 1. Organization.

§ 120-161. Facilities and staff.

The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the School of Government at the University of North Carolina at Chapel Hill, the Local Government Commission, the Department of Environment and Natural Resources, or other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1989, c. 727, s. 218(82); 1997-443, s. 11A.119(a); 2006-264, s. 29(j).)

Effect of Amendments. — Session Laws 2006-264, s. 29(j), effective August 27, 2006, substituted "School of Government at the University of North Carolina at Chapel Hill" for "Institute of Government" near the beginning of the third sentence.

§ 120-180. Commission; creation.

Editor's Note. —

Session Laws 2006-108, s. 1(a)-(c), provides: "(a) The Department of Health and Human Services, Division of Aging and Adult Services and the Division of Medical Assistance, shall provide education, and training if necessary, to ensure that Community Alternatives Program (CAP) case managers are aware of adult day health services and that this option is being considered in all situations appropriate for the client.

"(b) The Department of Health and Human Services, Division of Aging and Adult Services, shall report on the status of the Partners in Caregiving Study recommendations.

"(c) The Department shall report the status of its activities under this section to the North Carolina Study Commission on Aging not later than July 30, 2006."

Session Laws 2006-109, s. 1, provides: "The Department of Health and Human Services shall examine the Community Alternatives Program for Disabled Adults (CAP/DA) in response to issues identified in the Medicaid Institutional Bias Study. The Department shall make an interim report of its findings to the North Carolina Study Commission on Aging on or before August 30, 2006, and shall submit its final report to the North Carolina Study Commission on Aging on or before August 30, 2007. The report shall include actions taken and planned by the Department in response to each bias identified in the study and shall include the following information:

"(1) Information on the utilization of CAP/DA slots, including a history of slots used per year over the last 10 years and the anticipated need during the next 10 years.

"(2) A description of the CAP/DA slot allocation formula; and a breakdown of slots by county, including the reallocation of any unused slots.

"(3) Strategies to ensure that the CAP/DA waiting list is managed as efficiently as possible, including consideration of whether there should be an expiration date tied to unused slots so that they may be reallocated in a timely manner to areas with waiting lists.

"(4) Implementation of a uniform screening/assessment tool and other strategies to ensure maximum operation efficiency and effectiveness for those individuals qualifying for CAP/DA services. This should include information on whether the lists should be prioritized by risk of institutionalization."

Session Laws 2006-110, s. 1, provides: "The Department of Health and Human Services shall collaborate with providers and advocates of home and community-based long-term care services to review the North Carolina Institutional Bias Study Report prepared by the Lewin Group and make recommendations on ways to address the biases identified in the report. The Department shall report its findings and recommendations to the North Carolina Study Commission on Aging on or before October 15, 2006."

Article 23.

The Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services.

§§ 120-204 through 120-207: Repealed by Session Laws 2006-32, s. 2, effective June 29, 2006.

Article 26.

Joint Legislative Oversight Committee on Information Technology.

§ 120-231. Committee duties; reports.

(a) The Joint Legislative Oversight Committee on Information Technology may:

(1) Evaluate the current technological infrastructure of State government and information systems use and needs in State government and determine potential demands for additional information staff, equipment, software, data communications, and consulting services in State government during the next 10 years. The evaluation may include an assessment of ways technological infrastructure and information systems use may be leveraged to improve State efficiency and services to the citizens of the State, including an enterprise-wide infrastructure and data architecture.

(2) Evaluate information technology governance, policy, and management practices, including policies and practices related to personnel and acquisition issues, on both a statewide and project level.

(3) Study, evaluate, and recommend changes to the North Carolina General Statutes relating to electronic commerce.

(4) Study, evaluate, and recommend action regarding reports received by the Committee.

(5) Study, evaluate, and recommend any changes proposed for future development of the information highway system of the State.

(b) The Committee may consult with the State Chief Information Officer on statewide technology strategies and initiatives and review all legislative proposals and other recommendations of the State Chief Information Officer.

(c) The Committee shall submit annual reports to the General Assembly on or before the convening of the regular session of the General Assembly each year. The Committee may submit interim reports at any time it deems appropriate. (1999-237, s. 22(a); 2004-129, ss. 7A(c), 36; 2006-264, s. 10.)

Effect of Amendments. —

Session Laws 2006-264, s. 10, effective August 27, 2006, deleted "Office of Information Technology Services" at the end of subsection (b).

ARTICLE 27.

The Joint Legislative Oversight Committee On Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 120-240. Creation and membership of Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

Editor's Note. —

Session Laws 2006-32, s. 3, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the following issues and report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly:

"(1) Mechanisms to allow area authorities and county programs to purchase bed days from the State psychiatric hospitals. The LOC shall consider options for holding area authorities and county programs accountable for their use of State psychiatric institutions, provide incentives to increase community capacity, and options for ensuring the State institutions have a sufficient funding stream to ensure quality care to patients and a stable and well-qualified workforce.

"(2) Whether implementation of a Medicaid 1915(b) waiver on a statewide or expanded local basis would strengthen the ability of area authorities and county programs to manage the mental health, developmental disabilities, and substance abuse system. As part of the study, the LOC shall examine the impact of the waiver on Piedmont Behavioral Health's ability to implement its management functions including utilization management for Medicaid services, consumer satisfaction, provider monitoring, use of best practices, and any other matters the LOC determines are relevant. If the LOC determines that a Medicaid 1915(b) waiver would improve the management capacity of area authorities and county programs, it shall also examine whether it would be more appropriate to seek a statewide waiver or whether it would be both possible and advisable for additional area authorities and county programs to seek individual waivers.

"(3) Whether G.S. 122C-147.1 should be amended to modify or repeal the provisions that place funds appropriated by the General Assembly into broad age and disability categories."

Session Laws 2006-32, s. 4, as amended by Session Laws 2006-187, s. 8, and as amended by Session Laws 2006-259, s. 44(a), provides: "The Legislative Research Commission shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

"(1) Funding mechanisms;

"(2) Target populations;

"(3) Interagency collaboration at the State and local levels; and

"(4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

"The Commission may report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

§ 120-244. Committee authority.

The Committee may obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, under G.S. 120-19, as if it were a committee of the General Assembly. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a committee of the General Assembly. Any cost of providing information to the Committee not covered by G.S. 120-19.3 may be reimbursed by the Committee from funds appropriated to it for its continuing study. (2006-32, s. 1.)

Editor's Note. — Session Laws 2006-32, s. 5, made this section effective June 29, 2006.

Article 29.

Joint Legislative Oversight Committee on Capital Improvements.

§ 120-258. Committee created.

Study — Improvement of Energy and Water Conservation in State-Owned Facilities. — Session Laws 2006-206, ss. 4.1, 4.2, provide: "In an effort to improve energy and water conservation by State departments, agencies, and institutions, the Joint Legislative Oversight Committee on Capital Improvements shall study the following:

"(1) The role of repair and renovation investments and related costs in reducing energy and water use in existing State-owned facilities by twenty percent (20%) by January 1, 2012.

"(2) The construction and design of new facilities, facility additions, and facility renovations with the goal of reducing energy and water use by twenty percent (20%) by January 1, 2012.

"(3) The State's method of funding and planning capital projects to improve the integration of long-term operating costs, such as energy and water use, into the design of State facilities.

"(4) The State's method of funding utility costs for State facilities and whether this method of funding creates adequate incentives for State departments, agencies, and institutions to reduce energy and water use, thereby reducing the State's utility costs.

"(5) The costs and benefits of constructing green buildings, Leadership in Energy and Environmental Design (LEED) certified buildings, building commissioning, and other design and construction techniques when constructing new State-owned facilities, facility additions, and facility renovations.

"(6) The relationship of guaranteed energy savings contracts to the State's investment in State-owned capital facilities.

"(7) Any other issue the Committee determines is pertinent to the reduction of energy and water use in State-owned facilities.

"No later than February 1, 2007, the Joint Legislative Oversight Committee on Capital Improvements shall submit a report, including any recommendations or legislative proposals, to the 2007 General Assembly."

§ 120-259. Purpose and powers of the Committee.

(a) The Joint Legislative Oversight Committee on Capital Improvements shall examine, on a continuing basis, capital improvements approved and undertaken for State facilities and institutions. As used in this section "capital improvements" includes repairs and renovations, and "State facilities and institutions" includes facilities and institutions of The University of North Carolina.

(b) **(Effective until July 1, 2007)** The Committee shall have oversight over implementation of the Capital Improvements Planning Act established under Article 1B of Chapter 143 of the General Statutes and shall consider the State six-year capital improvement plan developed pursuant to G.S. 143-34.45.

(b) **(Effective July 1, 2007)** The Committee shall have oversight over implementation of the six-year capital improvements plan developed pursuant to G.S. 143C-8-5.

(c) The Committee, while in discharge of official duties, shall have access to any paper or document and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120.19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly.

(d) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2002-126, s. 29.3; 2006-203, s. 63.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2007. The second version of subsection (b) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 63, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "six-year capital improvements plan developed pursuant to G.S. 143C-8-5" for "Capital Improvements Planning Act established under Article 1B of Chapter 143 of the General Statutes and shall consider the State six-year capital improvement plan developed pursuant to G.S. 143-34.45" in subsection (b).

Article 32.

Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program.

(Effective until June 30, 2015)

§ 120-275. (Effective until June 30, 2015) Commission established.

There is established the Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this Article as Article 30 of Chapter 120 and this section as G.S. 120-270; they were recodified as Article 32 of Chapter 120 and G.S. 120-275, respectively, at the direction of the Revisor of Statutes.

Session Laws 2006-261, s. 7, makes this Article effective August 27, 2006, and provides that it expires on June 30, 2015.

Session Laws 2006-261, s. 6, contains a severability clause.

§ 120-276. (Effective until June 30, 2015) Membership; terms.

(a) Membership. — The Commission shall be composed of 12 members as follows:

(1) Five members of the House of Representatives appointed by the Speaker of the House.

(2) Five members of the Senate appointed by the President Pro Tempore of the Senate.

(3) The Senate and House cochairs of the Joint Legislative Transportation Oversight Committee, or their designees, shall serve as ex officio members.

(b) Terms. — Members of the Commission shall serve two-year terms, beginning July 1 of each odd-numbered year. Members shall serve at the pleasure of the appointing authority. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from the Commission.

(c) Vacancies. — Vacancies on the Commission shall be filled by the appointing authority. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this section as G.S. 120-271; it was recodified as G.S. 120-276 at the direction of the Revisor of Statutes.

§ 120-277. (Effective until June 30, 2015) Duties of the Commission.

The Commission shall:

(1) Monitor the implementation, and assess and evaluate the effectiveness, of the Department of Transportation program under G.S. 136-28.4.

(2) Review the strategies the Department of Transportation plans to use to implement the requirements of G.S. 136-28.4.

(3) Develop recommendations for submittal to the Department of Transportation or the General Assembly to improve the program under G.S. 136-28.4. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this section as G.S. 120-271; it was recodified as G.S. 120-277 at the direction of the Revisor of Statutes.

§ 120-278. (Effective until June 30, 2015) Department of Transportation reporting.

The Department of Transportation shall report quarterly to the Commission on the status of the program under G.S. 136-28.4 and efforts made to achieve the goals of the program. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this section as G.S. 120-272; it was recodified as G.S. 120-278 at the direction of the Revisor of Statutes.

§ 120-279. (Effective until June 30, 2015) Organization of Commission.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program. The Commission shall meet upon the joint call of the cochairs.

(b) A quorum of the Commission is seven members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Commission has the powers of a joint commission under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Commission receive subsistence and travel expenses as provided in G.S. 120-3.1. The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services Commission, the Directors of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this section as G.S. 120-273; it was recodified as G.S. 120-279 at the direction of the Revisor of Statutes.

Chapter 120C.

Lobbying.

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ARTICLE 1.

General Provisions.

§§ 120C-1 through 120C-99: Reserved for future codification purposes.

§ 120C-100. Definitions.

(a) As used in this Article, the following terms mean:

- (1) Commission. — The State Ethics Commission under Chapter 138A of the General Statutes.
- (2) Designated individual. — A legislator, legislative employee, or public servant.
- (3) Executive action. — The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:
  - a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.
  - b. A public servant's communication with a person, or another person on that person's behalf, with respect to any of the following:
    - 1. Applying for a permit, license, determination of eligibility, or certification.
    - 2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.
    - 3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.
    - 4. Ratemaking.
  - c. Internal administrative functions, including those functions exempted from the definition of "rule" in G.S. 150B-2(8a).
  - d. Ministerial functions.
  - e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting, or submitted as written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation, and no reportable expenditure is made.
- (4) In session. — One of the following:
  - a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:
    - 1. Adjourns sine die.
    - 2. Recesses or adjourns for more than 10 days.
  - b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:
    - 1. Adjourns sine die.
    - 2. Recesses or adjourns for more than 10 days.
- (5) Legislative action. — The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(6) Legislative employee. — Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, but not including legislators, members of the Council of State, or pages.

(7) Legislator. — As defined in G.S. 138A-3 and G.S. 120C-104.

(8) Liaison personnel. — Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals.

(9) Lobbying. — Any of the following:
  a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family.
  b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(10) Lobbyist. — An individual who engages in lobbying and meets any of the following criteria:
  a. Is employed by a person for the intended purpose of lobbying.
  b. Represents another person, but is not directly employed by that person, and receives compensation for the purpose of lobbying. For the purposes of this sub-subdivision, the term compensation shall not include reimbursement of actual travel and subsistence.
  c. Contracts for economic consideration for the purpose of lobbying.
  d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall anemployee be considered a lobbyist if less than five percent (5%) of that employee's actual duties in any 30-day period include engaging in lobbying as defined in subdivision (9)a. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

(11) Lobbyist principal and principal. — The person on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the individual members of the association or other organization.

The term "lobbyist's principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter.

(12) Reportable expenditure. — Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:
  a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.
  b. A contract, agreement, promise, or other obligation whether or not legally enforceable.

(13) Solicitation of others. — A solicitation of members of the public to communicate directly with or contact one or more designated individuals for the purpose of influencing or attempting to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:
a. A broadcast, cable, or satellite transmission.
b. An e-mail communication or a Web site posting.
c. A communication delivered by print media as defined in G.S. 163-278.38Z.
d. A letter or other written communication delivered by mail or by comparable delivery service.
e. Telephone.
f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter. (1933, c. 11, s. 1; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2001-424, s. 6.10(b); 2005-456, s. 1.; 2006-201, s. 18.)

Editor's Note. — Former Article 9 of Chapter 120, as rewritten by Session Laws 1975, c. 820, s. 2, was recodified as Article 9A of Chapter 120, by Session Laws 2005-456, s. 1. Session Laws 2006-201, s. 17, repealed former Article 9A of Chapter 120 and incorporated the subject matter of those articles in this Chapter 120C. Where appropriate, the historical citations to sections in former Articles 9 and 9A of Chapter 120 have been added to corresponding sections in this chapter.

Session Laws 2006-201, s. 25, makes this Chapter effective January 1, 2007, and applicable to covered persons and legislative employees, to gifts received, to acts and conflicts of interest that arise, and to offenses committed, on or after January 1, 2007. Furthermore, G.S. 120C-304, as enacted by Session Laws 2006-201, s. 18, is applicable to appointments made on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

§ 120C-101. Rules and forms.

(a) The Commission shall adopt any rules necessary to interpret and carry out the provisions of this Chapter. The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) With respect to the forms adopted under subsection (a) of this section, the Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government, or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so, and the business has communicated that commitment or decision to the State or local government agency involved with the project.

(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall maintain a mailing list of interested persons as provided in G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

(1) Publish the proposed rules in the North Carolina Register.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

(3) Notify persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.

(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this section becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code. (1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18.)

§ 120C-102. Advisory opinions.

(a) At the request of any person affected by this Chapter, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

(c) The Commission shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record. (2006-201, s. 18.)

§ 120C-103. Lobbying education program.

(a) The Commission shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Commission shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Commission deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the Commission within six months of the person's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Commission deems appropriate. The Commission shall also make lobbying education and awareness programs available to lobbyists and lobbyists' principals. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Commission shall publish a newsletter containing summaries of the advisory opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals upon request. (2006-201, s. 18.)

§ 120C-104. Chapter applies to candidates for certain offices.

For purposes of this Chapter, the term "legislator" as defined in G.S. 120C-100(7) and the term "public servant" as defined in G.S. 138A-3(30)a. shall include a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or nominated under G.S. 163-114 or G.S. 163-98. (2006-201, s. 18.)

§§ 120C-105 through 120C-199: Reserved for future codification purposes.

ARTICLE 2.

Registration.

§ 120C-200. Lobbyist registration procedure.

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for a person to lobby without registering within one business day of engaging in any lobbying as defined in G.S. 120C-100(9) unless exempted by thisChapter.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address, and telephone number; the registrant's place of business; the full name, complete address, and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

(e) Each lobbyist shall identify himself or herself as a lobbyist prior to engaging in lobbying communications or activities with a designated individual. The lobbyist shall also disclose the identity of the lobbyist's principal connected to that lobbying communication or activity. (1933, c. 11, s. 2; 1973, c. 1451; 1975, c. 820, s. 1; 1983, c. 713, s. 51; 1991, c. 740, s. 1.1; 2004-203, s. 50(a); 2006-201, s. 18.)

Editor's Note. — Session Laws 2006-66, s. 6.20, as added by Session Laws 2006-221, s. 3B, provides: "There is created in the Office of State Budget and Management a Special Reserve for Lobbying Registration Reform. Of the funds appropriated to the Office of the Secretary of State in S.L. 2005-276 for Lobbyist Registration Enhancement and the funds appropriated in S.L. 2006-66 to the Office of the Secretary of State for Lobbyist Registration Reform, the sum of one hundred thirty-five thousand eight hundred two dollars ($135,802) in recurring funds and twenty-four thousand dollars ($24,000) in nonrecurring funds shall be transferred to the Reserve.

"After consultation with the Joint Legislative Commission on Governmental Operations, the Director of the Budget may establish two positions and authorize the expenditure of these funds to implement the provisions of House Bill 1843 of the 2005 General Assembly, if enacted."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 120C-201. Lobbyist's registration fee.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyists registering to represent persons who have been granted nonprofit status under 26 U.S.C. § 501(c)(3). (1975, c. 852, s. 1; 1983, c. 713, s. 50; 1991, c. 740, s. 1.1; 2002-126, s. 29A.33; 2005-456, s. 1; 2006-201, s. 18.)

§§ 120C-202 through 120C-205: Reserved for future codification purposes.

§ 120C-206. Lobbyist's principal's authorization.

(a) A written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address, and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent that principal.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed. (1933, c. 11, s. 4; 1961, c. 1151; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18.)

§ 120C-207. Lobbyist's principal's fees.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist's principals that have been granted nonprofit status under 26 U.S.C. § 501(c)(3). (1933, c. 11, s. 4; 1961, c. 1151; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18.)

§§ 120C-208 through 120C-214: Reserved for future codification purposes.

§ 120C-215. Other persons required to register.

(a) A person not otherwise required to register under this Chapter shall register and report when the total expense incurred for solicitation of others exceeds three thousand dollars ($3,000) during any 90-day period. Expenses incurred shall mean the costs of producing and transmitting the communication and, if the communication is made at a conference, meeting, or similar event, the costs of planning, hosting, sponsoring, and attending the conference, meeting, or similar event.

(b) A person required to register and report under this section shall be referred to as a "solicitor" for purposes of this Chapter.

(c) No fee shall be charged for registering as a solicitor. (2006-201, s. 18.)

§§ 120C-216 through 120C-219: Reserved for future codification purposes.

§ 120C-220. Publication and availability of registrations.

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically. (2006-201, s. 18.)

§§ 120C-221 through 120C-299: Reserved for future codification purposes.

ARTICLE 3.

Prohibitions and Restrictions.

§ 120C-300. Contingency fees prohibited.

(a) No person shall act as a lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to a person doing business with the State who is engaged in sales with respect to that business with the State whose regular compensation agreement includes commissions based on those sales.

(c) Any compensation paid to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund. (1933, c. 11, s. 3; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18.)

§ 120C-301. Election influence prohibited.

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist's principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election. (1933, c. 11, s. 3; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18.)

§ 120C-302. Campaign contributions prohibition.

(a) No lobbyist may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(30)a.

(b) No lobbyist may collect contributions from multiple contributors, take possession of such multiple contributions, or transfer or deliver the collected multiple contributions to the intended recipient. This section shall apply only to contributions to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate is a legislator as defined in G.S. 120C-100 or a public servant as defined in G.S. 138A-3(30)a.

(c) This section shall not apply to a lobbyist, who has filed a notice of candidacy for office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or has been nominated under G.S. 163-114 or G.S. 163-98, making a contribution to that lobbyist's candidate campaign committee. (2006-201, s. 18.)

§ 120C-303. Gifts by lobbyists and lobbyist's principals prohibited.

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may directly or indirectly give a gift to a designated individual.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86, but shall be subject to civil fines under G.S. 120C-602(b). (2006-201, s. 18.)

§ 120C-304. Restrictions.

(a) No legislator or former legislator may register as a lobbyist under this Chapter:

(1) While in office.

(2) Before the later of the close of the session in which the legislator served or six months after leaving office.

(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist while in office or within six months after leaving office.

(c) No person serving as a public servant as defined in G.S. 138A-3(30)c. may register as a lobbyist under this Chapter within six months after separation from employment.

(d) No individual registered as a lobbyist under this Chapter shall serve as a treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(e) A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(f) Any appointment or registration made in violation of this section shall be void. (2005-456, s. 1; 2006-201, s. 18.)

Editor's Note. — Session Laws 2006-201, s. 25, provides, in part, that this section is applicable to appointments made on or after January 1, 2007.

§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure. (2006-201, s. 18.)

§§ 120C-306 through 120C-399: Reserved for future codification purposes.

ARTICLE 4.

Reporting.

§ 120C-400. Reporting of reportable expenditures.

For purposes of this Chapter, all reportable expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual, or those persons' immediate family members, in the regular course of that individual's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a designated individual, or that person's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer. (2005-456, s. 1; 2006-201, s. 18.)

§ 120C-401. Reporting generally.

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 10 business days after the end of the reporting period.

(b) Each report shall set forth the fair market value or face value if shown, date, a description of the reportable expenditure, name and address of the payee, or beneficiary, and name of any designated individual, or that person's immediate family member connected with the reportable expenditure. When more than 15 designated individuals benefit from a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(c) Reportable expenditures shall be reported using the following categories:

(1) Transportation and lodging.
(2) Entertainment.
(3) Food and beverages.
(4) Meetings and events.
(5) Gifts.
(6) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist's principal, or other person required to report of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist's principal, or solicitor. No lobbyist, lobbyist's principal, or solicitor may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist's principal, or solicitor for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1991 (Reg. Sess., 1992), c. 1030, s. 51.9; 1999-338, s. 1; 2005-456, s. 1; 2006-201, s. 18.)

§ 120C-402. Lobbyist's reports.

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall include all of the following for the reporting period:

(1) All reportable expenditures made for the purpose of lobbying.
(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).
(3) Reportable expenditures reimbursed by the lobbyist's principal, or another person on the lobbyist's principal's behalf.
(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9) and all gifts given under G.S. 138A-32(e)(10).

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly reportable expenditure report shall also be included in each quarterly report required by subsection (a) of this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1991 (Reg. Sess., 1992), c. 1030, s. 51.9; 1999-338, s. 1; 2005-456, s. 1; 2006-201, s. 18.)

§ 120C-403. Lobbyist's principal's reports.

(a) Each lobbyist's principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following for the reporting period:

(1) All reportable expenditures made for the purpose of lobbying.
(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).
(3) Compensation paid to all lobbyists during the quarter. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.

(4) Reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9) and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars ($200.00).

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1991 (Reg. Sess., 1992), c. 1030, s. 51.10; 1999-338, s. 2; 2005-456, s. 1; 2006-201, s. 18.)

§ 120C-404. Solicitor's reports.

(a) Each solicitor shall file quarterly reports under oath with the Secretary of State.

(b) The report shall include all of the following:

(1) All reportable expenditures made for the purpose of lobbying during the reporting period.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000). (2006-201, s. 18.)

§ 120C-405. Report availability.

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes. (2006-201, s. 18.)

§§ 120C-406 through 120C-499: Reserved for future codification purposes.

Article 5.

Liaison Personnel.

§ 120C-500. Liaison personnel.

(a) All agencies and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, and other units of government in the executive branch, except local units of government, shall designate liaison personnel to lobby for legislative action.

(b) No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees.

(c) No more than two persons may be designated as liaison personnel for each agency and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, and other units of government in the executive branch. (1933, c. 11, s. 7; 1975, c. 820, s. 1; 1977, c. 697; 1991, c. 740, s. 1.1; 1993, c. 553, s. 3; 2001-424, s. 6.10(a); 2005-456, s. 1; 2006-201, s. 18.)

§ 120C-501. Applicability of Chapter on liaison personnel.

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) G.S. 120C-200 shall apply to liaison personnel. No registration fee shall be required for registration under this subsection.

(c) Liaison personal designated under this Article shall file reports under G.S. 120C-402.

(d) G.S. 120C-303 shall apply to liaison personnel with respect to legislators and legislative employees.

(e) The University of North Carolina or any of its constituent institutions, or designated liaison personnel of those persons, shall not give, for the purpose of lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students. (2001-424, s. 6.10(a); 2005-456, s. 1; 2006-201, s. 18.)

§§ 120C-502 through 120C-599: Reserved for future codification purposes.

Article 6.

Violations and Enforcement.

§ 120C-600. Powers and duties of the Secretary of State.

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under Articles 4 and 8 of this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures. The Secretary of State shall refer to the Commission any complaints of violations of this Chapter other than those related solely to Articles 2, 4, or 8 of this Chapter.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of Articles 2, 4, and 8 of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of Articles 2, 4, and 8 of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of Articles 2, 4, and 8 of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4. (2005-456, s. 1; 2006-201, s. 18; 2006-259, s. 43.5(a).)

Effect of Amendments. — Session Laws 2006-259, s. 43.5(a), effective January 1, 2007, substituted "Articles 2, 4, or 8" for "Article 4 or Article 8" in the second sentence of subsection (a); substituted "Articles 2, 4, and 8" for "Articles 4 and 8" in the first and second sentences of subsection (b); and, substituted "Articles 2, 3, and 8" for "Articles 4 and 8" near the beginning of subsection (c).

§ 120C-601. Powers and duties of the Commission.

(a) The Commission may investigate complaints of violations of this Chapter and shall refer complaints related solely to Articles 2, 4, or 8 of this Chapter to the Secretary of State.

(b) The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1. (2006-201, s. 18; 2006-259, s. 43.5(a).)

Editor's Note. — Session Laws 2006-201, s. 18, enacted this section as G.S. 120-601; it was recodified as G.S. 120C-601 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2006-259, s. 43.5(a), effective January 1, 2007, substituted "Articles 2, 4, or 8" for "Article 4 or Article 8" in subsection (a).

§ 120C-602. Punishment for violation.

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of Articles 2, 4, or 8 of this Chapter up to five thousand dollars ($5,000) per violation. In addition to the criminal penalties set forth in this section, the Commission may levy civil fines for a violation of any provision of this Chapter except Article 2, 4, or 8 of this Chapter up to five thousand dollars ($5,000) per violation. (1933, c. 11, s. 8; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1993, c. 539, s. 914; 1994, Ex. Sess., c. 24, s. 14(c); 2005-456, s. 1; 2006-201, s. 18; 2006-259, s. 43.5(a).)

Effect of Amendments. — Session Laws 2006-259, s. 43.5(a), effective January 1, 2007, in subsection (b), substituted "Articles 2, 4, or 8" for "Article 4 or 8" in the first sentence, and "Article 2, 4, or 8" for "Article 4 or Article 8" in the second sentence.

§ 120C-603. Enforcement by district attorney and Attorney General.

(a) The Commission or the Secretary of State, as appropriate, may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Commission or any member employee of the Commission shall be referred to the Attorney General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter. (1975, c. 820, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 112; 2005-456, s. 1; 2006-201, s. 18; 2006-259, s. 43.5(b).)

Effect of Amendments. — Session Laws 2006-259, s. 43.5(b), effective January 1, 2007, inserted "or the Secretary of State, as appropriate" near the beginning of subsection (a).

§§ 120C-604 through 120C-699: Reserved for future codification purposes.

ARTICLE 7.

Exemptions.

§ 120C-700. Persons exempted from this Chapter.

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with matters pertaining to the office and public duties, except for a person designated as liaison personnel under G.S. 120C-500.

(4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes, or is an employee of any recognized news medium, while engaged in the acquisition and publication of news or news and commentary on behalf of that recognized news medium.

(6) Designated individuals while acting in their official capacity.

(7) A person responding to inquiries from a designated individual and who engages in no further activities as a lobbyist in connection with that inquiry.

(8) A person who is a political committee as defined in G.S. 163-278.6(14), that person's employee, or that person's contracted service provider. (1933, c. 11, s. 7; 1975, c. 820, s. 1; 1977, c. 697; 1991, c. 740, s. 1.1; 1993, c. 553, s. 3; 2005-456, s. 1; 2006-201, s. 18.)

§§ 120C-701 through 120C-799: Reserved for future codification purposes.

Article 8.

Miscellaneous.

§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(c) If a designated individual accepts a scholarship valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any gift from an extended family member to a designated individual.

(3) Gifts associated primarily with the designated individual's or that person's immediate family member's employment.

(4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(f) Within 10 business days after the end of the quarter in which the reportable expenditure was made, reports required by this section shall be filed with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest.

(g) For purposes of this section, the term "scholarship" shall mean a grant-in-aid to attend a conference, meeting, or other similar event. (2005-456, s. 1; 2006-201, s. 18.)

§§ 120C-801 through 120C-899: Reserved for future codification purposes.

Chapter 121.

Archives and History.

Article 1.

General Provisions.

Sec.
121-9. Historic properties.
121-12.1. (Effective July 1, 2007) Grants-in-aid.

Article 2.

Tryon's Palace and Tryon's Palace Commission.

Sec.
121-21.1. Tryon Palace Historic Sites and Gardens Fund.

Article 1.

General Provisions.

§ 121-9. Historic properties.

(a) Administration of Properties Acquired by State. — Historic or archaeological properties acquired by the State for administration by the State of North Carolina shall be under the control and administration of the Department of Cultural Resources. Upon approval of the North Carolina Historical Commission and the Secretary of Cultural Resources, the Department of Cultural Resources may, in its discretion, make a contract with any county or municipality within the State or with any nonprofit corporation or organization for the administration of any portion of such property.

(b) Acquisition of Historic Properties. — For the purpose of protecting or preserving any property of historical, architectural, archaeological, or other cultural importance to the people of North Carolina, and subject to the provisions of Subchapter II of Chapter 146 of the General Statutes, the Department may, with the approval of the North Carolina Historical Commission and after consultation with the Joint Legislative Commission on Governmental Operations, acquire, preserve, restore, hold, maintain, operate, and dispose of such properties, together with such adjacent lands as may be necessary for their protection, preservation, maintenance, and operation. Such property may be real or personal in nature, and in the case of real property, the acquisition may include the fee or any lesser interest therein. Property may be acquired by gift, grant, bequest, devise, lease, purchase, or condemnation pursuant to the provisions of Chapter 40A of the General Statutes, or otherwise. Property may be acquired by the Department, using such funds as may be appropriated for the purpose or moneys available to it from any other source.

(b1) In the case of real property, the North Carolina Historical Commission shall report the following information to the Joint Legislative Commission on Governmental Operations before acquiring the property:

(1) The statewide historical significance of the site.
(2) The potential uses of the site.
(3) The capital requirements of the site over a 20-year period of time.
(4) The annual operating costs of the site.
(5) The expected levels of visitation at the site.
(6) Any other information that would assist in determining the full cost of maintaining, operating, and administering the site as State property.

(c) Interests Which May Be Acquired. — In the case of real property, the interest acquired shall be limited to that estate, interest, or term deemed by the Department to be reasonably necessary for the continued protection or preservation of the property. The Department may acquire the fee simple title, but where it finds that a lesser interest, including any development right, negative or affirmative easement in gross or appurtenant, covenant, lease, or other contractual right of or to any real property to be the most practical and economical method of protecting and preserving historic property, the lesser interest may be acquired.

(d) Conveyance of Property for Preservation Purposes. — In appropriate cases, the Department may acquire or dispose of the fee or lesser interest to any such property for the specific purpose of conveying or leasing the property back to its original owner or of conveying or leasing it to such other person, firm, association, corporation, or other organization under such covenants, deed restrictions, lease, or other contractual arrangements as will limit the future use of the property in such a way as to insure its preservation. Where such action is taken, the property may be conveyed or leased by private sale. In all cases where property is conveyed, it shall be subjected by covenant or otherwise to such rights of access, public visitation, and other conditions or restrictions of operation, maintenance, restoration, and repair as the Department may prescribe, or to such conditions as may be agreed upon between the Department and the grantee or lessee to accomplish the purposes of this section.

(e) Use of Property so Acquired. — Any historic property acquired, whether in fee or otherwise, may be used, maintained, improved, restored, or operated by the Department for any public purpose within its powers and not inconsistent with the purpose of the continued preservation of the property. The property shall not be subject to condemnation by the State of North Carolina or any of its agencies or political subdivisions at any time, unless such method of acquisition is first approved by the Governor and Council of State.

(f) **(Effective until July 1, 2007)** Emergency Acquisition Where Funds Not Immediately Available. — If funds or contributions for the acquisition of needed historic property are not available, the Governor and Council of State may, upon the recommendation of the Secretary of Cultural Resources and approval of the North Carolina Historical Commission, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on the property or properties, which option shall continue until 90 days after the adjournment sine die of the next General Assembly. Upon recommendation of the Secretary and approval of the Historical Commission, the Governor and Council of State may allocate funds from the Contingency and Emergency Fund for the immediate acquisition, preservation, restoration, or operation of historically, archaeologically, architecturally, or culturally important properties. All funds hereinafter appropriated to purchase, restore, maintain, develop, or operate historic or archaeological or other important property shall be administered subject to the provisions of Article 1 of Chapter 143 of the General Statutes unless the statute making the appropriation shall in specific and express terms provide otherwise.

(f) **(Effective July 1, 2007)** Emergency Acquisition Where Funds Not Immediately Available. — If funds or contributions for the acquisition of needed historic property are not available, the Governor and Council of State may, upon the recommendation of the Secretary of Cultural Resources and approval of the North Carolina Historical Commission, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on the property or properties, which option shall continue until 90 days after the adjournment sine die of the next General Assembly. Upon recommendation of the Secretary and approval of the Historical Commission, the Governor and Council of State may allocate funds from the Contingency and Emergency Fund for the immediate acquisition, preservation, restoration, or operation of

G.S. 121-9(f) is set out twice. See note.

historically, archaeologically, architecturally, or culturally important properties. All funds hereinafter appropriated to purchase, restore, maintain, develop, or operate historic or archaeological or other important property shall be administered subject to the provisions of Chapter 143C and G.S. 143B-53.1 of the General Statutes unless the statute making the appropriation shall in specific and express terms provide otherwise.

(g) Power to Acquire Property by Condemnation. — In the event that a property which has been found by the Department of Cultural Resources to be important for public ownership or assistance is in danger of being sold, used, or neglected to such an extent that its historical or cultural importance will be destroyed or seriously impaired, or that the property is otherwise in danger of destruction or serious impairment, the Department of Cultural Resources, after receiving the approval of the North Carolina Historical Commission and of the Governor and Council of State, may acquire the historic property or any interest therein by condemnation under the provisions of Chapter 40A of the General Statutes. The Department of Cultural Resources, upon finding that destruction or serious impairment of the value of the property is imminent, shall file with the Governor and Council of State a report on the importance of the property and the desirability of ownership of the property, or the ownership of an interest therein, by the State of North Carolina. Upon giving their approval, the Governor and Council of State shall cause to have filed such approval with the clerk of the superior court in the county or counties where the property is situated. Until the approval is filed, the power of condemnation may not be exercised. All condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina.

(h) Preservation and Custodial Care of State Capitol. — The rotunda, corridors, and stairways of the first floor of the State Capitol and all portions of the second, third, and loft floors of the said building shall be placed in the custody of the Department of Cultural Resources; and the Department shall, subject to the availability of funds for the purpose, care for and administer these areas for the edification of present and future generations. The aforesaid areas shall be preserved as historic shrines and shall be maintained insofar as practicable as they shall appear following the restoration of the Capitol. The Department of Cultural Resources is authorized to deny the use of the legislative chambers for meetings in order that they, with their historic furnishings, may be better preserved for posterity; provided, however, that the General Assembly may hold therein such sessions as it may by resolution deem proper.

The Department of Cultural Resources is hereby entrusted with the responsibilities herein specified as being the agency with the experience best qualified to preserve and administer historic properties in a suitable manner. However, for the purposes of carrying out the provisions of this section, it is hereby directed that such cooperation and assistance shall be made available to the said Department of Cultural Resources and such labor supplied, as may be feasible, by the Department of Administration.

The offices and working areas of the first floor as well as all washrooms and the exterior of the Capitol shall remain under the jurisdiction of the Department of Administration: Provided, however, that the Department of Administration shall seek the advice of the Department of Cultural Resources in matters relating to any alteration, renovation, and furnishing of said offices and areas. (1955, c. 543, s. 1; 1961, c. 724; 1963, c. 210, s. 1; 1965, c. 1129; 1971, c. 480, ss. 1-3, 5; 1973, c. 476, s. 48; 1991 (Reg. Sess., 1992), c. 1030, s. 34; 1993 (Reg. Sess., 1994), c. 682, s. 2; 1995, c. 507, s. 12(b); 1996, 2nd Ex. Sess., c. 18, s. 7.7(a); 2006-203, s. 64.)

Subsection (f) Set Out Twice. — The first version of subsection (f) set out above is effective until July 1, 2007. The second version of subsection (f) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 64, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "Chapter 143C and G.S. 143B-53.1" for "Article 1 of Chapter 143" in the last sentence of subsection (f).

§ 121-12.1. (Effective July 1, 2007) Grants-in-aid.

Under the concepts of reorganization of State government, responsibility for administering appropriations to the Department of Cultural Resources for grants-in-aid to private nonprofit organizations in the areas of history, art, and culture is hereby assigned to the Department of Cultural Resources. It shall be the responsibility of the Department of Cultural Resources to receive, analyze, and recommend to the Governor and the General Assembly the disposition of any request for funding received by it from or for any of these organizations, and to disburse under provisions of law any appropriations made to the Department for them. Appropriations to the Department of Cultural Resources for grants-in-aid to assist in the restoration of historic sites owned by private nonprofit organizations shall in addition be expended only in accordance with G.S. 121-11, 121-12 and 143B-53.1. (1977, c. 802, s. 47; 1985 (Reg. Sess., 1986), c. 955, s. 40; c. 1014, s. 171(c); 2006-203, s. 65.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 65, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in the second sentence, deleted ", the Advisory Budget Commission," following "Governor", and substituted "143B-53.1" for "143-31.2" at the end; and deleted the former last sentence, which read: "The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget."

ARTICLE 2.

Tryon's Palace and Tryon's Palace Commission.

§ 121-21.1. Tryon Palace Historic Sites and Gardens Fund.

(a) Fund. — The Tryon Palace Historic Sites and Gardens Fund is hereby created as a special, interest-bearing, and nonreverting fund in the Division of Tryon Palace Historic Sites and Gardens. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used for repair, renovation, expansion, and maintenance at Tryon Palace Historic Sites and Gardens.

(b) Disposition of Fees. — All entrance fee receipts shall be credited to the Tryon Palace Historic Sites and Gardens Fund.

(c) The Tryon Palace Commission shall submit to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division by September 30 of each year a report on the Tryon Palace Historic Sites and Gardens Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year. (2005-276, s. 19A.1; 2006-180, s. 1.)

Effect of Amendments. — Session Laws 2006-180, s. 1, effective July 1, 2006, in subsection (a), substituted "special, interest-bearing," for "special" in the first sentence; and inserted the second sentence.

Chapter 122A.

North Carolina Housing Finance Agency.

Sec.
122A-8.1. (Effective July 1, 2007) Powers of the State Treasurer.
122A-16. (Effective July 1, 2007) Oversight by committees of General Assembly; annual reports.

§ 122A-8.1. (Effective July 1, 2007) Powers of the State Treasurer.

Notwithstanding any other provisions of this act, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the act upon request of the Agency and with the approval of the Local Government Commission.

The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this act.

The North Carolina Housing Finance Agency shall determine when a bond issue is indicated. The Agency shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys.

The State Treasurer shall have the exclusive power to employ and designate the financial consultants, underwriters, and bond attorneys to be associated with the bond issue; provided, at least annually, the Treasurer shall seek the written recommendations of the Housing Finance Agency; and, subsequent to each bond issue, the Treasurer shall conduct a formal performance evaluation of the financial consultants, underwriters and bond attorneys which shall be open to public inspection.

The Director of the Budget shall provide to the State Treasurer the funds necessary to defray the costs incurred in performing the fiscal functions reserved to the Treasurer under this act from the funds allocated to the Agency pursuant to the 1975 Session Laws.

Nothing in this act is intended to abrogate or diminish the inherent power of the State Treasurer to negotiate the terms and conditions of the bonds and notes, and to issue the bonds and notes authorized by General Statutes Chapter 122A. (1977, c. 673, s. 5; 1983, c. 717, s. 38; 1985, c. 723, s. 5; 1985 (Reg. Sess., 1986), c. 955, ss. 41, 42; 2006-203, s. 66.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 66, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last sentence in the fifth paragraph, which read: "Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission."

§ 122A-16. (Effective July 1, 2007) Oversight by committees of General Assembly; annual reports.

The Finance Committee of the House of Representatives and the Finance Committee of the Senate shall exercise continuing oversight of the Agency in

G.S. 122A-16 is set out twice. See notes.

order to assure that the Agency is effectively fulfilling its statutory purpose; provided, however, that nothing in this Chapter shall be construed as required by the Agency to receive legislative approval for the exercise of any of the powers granted by this Chapter. The Agency shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the Office of State Budget and Management, State Auditor, the aforementioned committees of the General Assembly and the Local Government Commission. Each such report shall set forth a complete operating and financial statement of the Agency during such year. The Agency shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Agency. The Agency shall on January 1 and July 1 of each year submit a written report of its activities to the Joint Legislative Commission on Governmental Operations. The Agency shall also at the end of each fiscal year submit a written report of its budget expenditures by line item to the Joint Legislative Commission on Governmental Operations. (1969, c. 1235, s. 16; 1973, c. 1296, s. 56; 1977, c. 673, s. 3; c. 771, s. 4; 1981, c. 895, s. 4; 1981 (Reg. Sess., 1982), c. 1191, s. 34; 1983 (Reg. Sess., 1984), c. 1034, s. 134; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 67.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 67, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "the Advisory Budget Commission" following "General Assembly" in the second sentence.

Chapter 122C.

Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

Article 1.

General Provisions.

Sec.
122C-3. Definitions.

Article 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

122C-23. Licensure.

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 1. Policy.

122C-102. State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services; system performance measures.

Part 2. State, County and Area Authority.

122C-111. Administration.
122C-112.1. Powers and duties of the Secretary.
122C-115. Duties of counties; appropriation and allocation of funds by counties and cities.
122C-115.1. County governance and operation of mental health, developmental disabilities, and substance abuse services program.
122C-115.2. LME business plan required; content, process, certification.
Sec.
122C-115.4. Functions of local management entities.
122C-117. Powers and duties of the area authority.
122C-118.1. Structure of area board.
122C-120.1. Job classifications; director and finance officer.
122C-121. Area director.

Part 4. Area Facilities.

122C-141. Provision of services.
122C-142. Contract for services.

Part 4A. Consumer and Family Advisory Committees.

122C-170. Local Consumer and Family Advisory Committees.
122C-171. State Consumer and Family Advisory Committee.
122C-172 through 122C-180. [Reserved.]

Part 5. State Facilities.

122C-185. Application of funds belonging to State facilities.

Article 5.

Procedures for Admission and Discharge of Clients.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

122C-270. Attorneys to represent the respondent and the State.

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

122C-289. Duty of assigned counsel; discharge.

ARTICLE 1.

General Provisions.

§ 122C-2. Policy.

Editor's Note. —

Session Laws 2006-66, s. 10.26(a) through (e), provides: "(a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of five million two hundred fifty thousand dollars ($5,250,000) for the 2006-2007 fiscal year shall be allocated on a per capita basis and shall be used by area authorities and county programs for operational start-up,capital, or subsidies related to the development and implementation of a plan for a continuum of regional crisis facilities and local crisis services ('crisis plan'). Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this section. As used in this section, the term 'crisis' includes services for individuals with mental illnesses, developmental disabilities, and substance abuse addictions.

"(b) Of the funds appropriated in this act for consultants to aid the Division and LMEs to the Department of Health and Human Services, the sum of two hundred twenty-five thousand dollars ($225,000) for the 2006-2007 fiscal year shall be used by the Department to enter into one or more personal services contracts to provide technical assistance to Local Management Entities to develop and implement the crisis plans required under subsection (a) of this section. In addition to any other factors the Department determines are relevant when selecting the consultant, the Department shall take into consideration whether an applicant has prior experience evaluating crisis services at a local, regional, and statewide level, prior experience assisting State and local public agencies develop and implement crisis services, and the ability to implement its responsibilities within the time frames established under this section. Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this subsection.

"(c) No later than August 15, 2006, the Secretary shall designate between 15 and 25 appropriate groupings of LMEs for the development of regional crisis facilities. As used in this section, the term 'regional crisis facility' means a facility-based crisis unit that serves an area that may be larger than the catchment area of a single LME, but that provides adequate access to a facility by all consumers in the State. The Secretary shall consult with LMEs in determining the regional groupings. The Secretary shall also take into consideration geographical factors, prior LME groupings and partnerships, and existing community facilities.

"(d) With the assistance of the consultant, the area authorities and county programs within a crisis region shall work together to identify gaps in their ability to provide a continuum of crisis services for all consumers and use the funds allocated to them to develop and implement a plan to address those needs. At a minimum, the plan must address the development over time of the following components: 24-hour crisis telephone lines, walk-in crisis services, mobile crisis outreach, crisis respite/residential services, crisis stabilization units, 24-hour beds, facility-based crisis, in-patient crisis, and transportation. Options for voluntary admissions to a secured facility must include at least one service appropriate to address the mental health, developmental disability, and substance abuse needs of adults, and the mental health, developmental disability, and substance abuse needs of children. Options for involuntary commitment to a secured facility must include at least one option in addition to admission to a State facility.

"If all area authorities and county programs in a crisis region determine that a facility-based crisis center is needed and sustainable on a long-term basis, the crisis region shall first attempt to secure those services through a community hospital or other community facility. If all the area authorities and county programs in the crisis region determine the region's crisis needs are being met, the area authorities and county programs may use the funds to meet local crisis service needs.

"(e) Each LME shall submit its crisis services plan to the Secretary for review no later than March 1, 2007. The plan shall take into consideration and attempt to utilize all other sources of funds in addition to the funds appropriated under this section. The Secretary shall review each plan to determine whether it meets all the requirements of this section. If the Secretary approves the plan, the LME shallreceive implementation funding."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 122C-3. Definitions.

The following definitions apply in this Chapter:

(1) "Area authority" means the area mental health, developmental disabilities, and substance abuse authority.

(2) "Area board" means the area mental health, developmental disabilities, and substance abuse board.

(2a) "Area director" means the administrative head of the area authority program appointed pursuant to G.S. 122C-121.

(2b) "Board of county commissioners" includes the participating boards of county commissioners for multicounty area authorities and multicounty programs.

(3) "Camp Butner reservation" means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.

(4) "City" has the same meaning as in G.S. 153A-1(1).

(5) "Catchment area" means the geographic part of the State served by a specific area authority or county program.

(6) "Client" means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(7) "Client advocate" means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.

(8) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(9) "Confidential information" means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. "Confidential information" does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

(9a) "Core services" are services that are necessary for the basic foundation of any service delivery system. Core services are of two types: front-end service capacity such as screening, assessment, and emergency triage, and indirect services such as prevention, education, and consultation at a community level.

(10) "County of residence" of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.

(10a) "County program" means a mental health, developmental disabilities, and substance abuse services program established, operated, and governed by a county pursuant to G.S. 122C-115.1.

(11) "Dangerous to himself or others" means:

a. "Dangerous to himself" means that within the relevant past:

1. The individual has acted in such a way as to show:

I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or

2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. "Dangerous to others" means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

(11a) "Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.

(12) "Department" means the North Carolina Department of Health and Human Services.

(12a) "Developmental disability" means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
c. Is likely to continue indefinitely;
d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and
e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or
f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(13) "Division" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department.

(13a) Repealed by Session Laws 2000-67, s. 11.21(c), effective July 1, 2000.

(13a1) Recodified as subdivision (13c).

(13b) Recodified as subdivision (13d).

(13c) "Eligible infants and toddlers" means children with or at risk for developmental delays or atypical development until:

a. They have reached their third birthday;
b. Their parents have requested to have them receive services in the preschool program for children with disabilities established under Article 9 of Chapter 115C of the General Statutes; and

c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday, unless the Secretary and the State Board enter into an agreement under G.S. 115C-106.4(c) [G.S. 115C-107.1(c)].

The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early intervention services shall be appropriate to the individual child's age and development.

(13d) "Eligible psychologist" means a licensed psychologist who has at least two years' clinical experience. After January 1, 1995, "eligible psychologist" means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

(14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:

a. An "area facility", which is a facility that is operated by or under contract with the area authority or county program. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A "licensable facility", which is a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;

e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;

f. A "State facility", which is a facility that is operated by the Secretary;

g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.

(15) "Guardian" means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.

(16) "Habilitation" means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

(17) "Incompetent adult" means an adult individual adjudicated incompetent.

(18) "Intoxicated" means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.

(19) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.

(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of attorney as prescribed in Article 3 of Chapter 32 of the General Statutes.

(20a) "Local funds" means fees from services, including client payments, Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds, and any other funds not administered by the Division.

(20b) "Local management entity" or "LME" means an area authority, county program, or consolidated human services agency. It is a collective term that refers to functional responsibilities rather than governance structure.

(21) "Mental illness" means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.

(22) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(23) "Mentally retarded with accompanying behavior disorder" means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

(24) "Next of kin" means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, "next of kin" means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.

(25) "Operating costs" means expenditures made by an area authority in the delivery of services for mental health, developmental disabilities,

and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.

(26) Repealed by Session Laws 1987, c. 345, s. 1.

(26a) "Other recipient" means an individual who is not admitted to a facility but who receives a service other than care, treatment, or rehabilitation services. The services that the "other recipient" may receive include consultative, preventative, educational, and assessment services.

(27) "Outpatient treatment" as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(28) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.

(29) "Physician" means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.

(29a) "Program director" means the director of a county program established pursuant to G.S. 122C-115.1.

(30) "Provider of support services" means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.

(30a) "Psychologist" means an individual licensed to practice psychology under Chapter 90. The term "eligible psychologist" is defined in subdivision (13a).

(30b) "Public services" means publicly funded mental health, developmental disabilities, and substance abuse services, whether provided by public or private providers.

(31) "Qualified professional" means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, certified fee-based practicing pastoral counselors, and certified counselors.

(32) "Responsible professional" means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.

(33) "Secretary" means the Secretary of the Department of Health and Human Services.

(33a) "Severe and persistent mental illness" means a mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation.

(34) Repealed by Session Laws 2001-437, s. 1.2(c), effective July 1, 2002.

(35) Repealed by Session Laws 2001-437, s. 1.2(c), effective July 1, 2002.

(35a) Renumbered as subdivision (35e).

(35b) "Specialty services" means services that are provided to consumers from low-incidence populations.

(35c) "State" or "Local" Consumer Advocate means the individual carrying out the duties of the State or Local Consumer Advocacy Program Office in accordance with Article 1A of this Chapter.

(35d) "State Plan" means the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(35e) "State resources" means State and federal funds and other receipts administered by the Division.

(36) "Substance abuse" means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. "Substance abuse" may include a pattern of tolerance and withdrawal.

(37) "Substance abuser" means an individual who engages in substance abuse.

(38) "Targeted population" means those individuals who are given service priority under the State Plan.

(39) "Uniform portal process" means a standardized process and procedures used to ensure consumer access to, and exit from, public services in accordance with the State Plan. (1899, c. 1, s. 28; Rev., s. 4574; C.S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4; 1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 7; 1987, c. 345, s. 1; c. 830, ss. 47(a), (b); 1989, c. 141, s. 8; c. 223; c. 486, s. 2; c. 625, s. 2; 1989 (Reg. Sess., 1990), c. 823, s. 11; c. 1003, s. 2; c. 1024, s. 26(a); 1993, c. 321, s. 220(a)-(c); c. 375, s. 6; c. 396, ss. 1, 2; 1995, c. 249, s. 1; c. 406, s. 5; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1998-198, s. 3; 1998-202, s. 4(r); 1999-186, s. 1; 2000-67, s. 11.21(c); 2001-437, ss. 1.2(b), 1.2(c); 2001-437, s. 1.2(a); 2003-313, s. 1; 2006-69, s. 3(n); 2006-142, ss. 4(a), 7.)

Editor's Note. —

The bracketed reference, "[G.S. 115C-107.1(c)]" in subsection (13c), was added at the direction of the Revisor of Statutes as that appears to be the intended reference.

Effect of Amendments. — Session Laws 2006-69, s. 3(n), effective July 10, 2006, in subdivision (13c)b., substituted "children with disabilities established under Article 9" for "handicapped children pursuant to Part 14 of Article IX"; and substituted "birthday, unless the Secretary and the State Board enter into an agreement under G.S. 115C-106.4(c)" for "birthday" in the second paragraph of subsection (13c).

Session Laws 2006-142, ss. 4(a) and 7, effective July 19, 2006, rewrote the introductory language; rewrote subdivision (14)b.; and added subdivision (20b).

CASE NOTES

Mental Health Records Previously Admitted Into Evidence In Parental Rights Termination Case. — Trial court did not err by considering mental health records of a mother contained within the underlying file and previously admitted into evidence in proceedings to terminate her parental rights, because the mental health records challenged by the mother were originally admitted into evidence during a permanency planning review hearing and were not challenged by the mother at that time. In re J.B., 172 N.C. App. 1, 616 S.E.2d 264, 2005 N.C. App. LEXIS 1589 (2005).

Applied in In re T.W., 173 N.C. App. 153, 617 S.E.2d 702, 2005 N.C. App. LEXIS 1922 (2005).

Cited in In re J.S.L., — N.C. App. —, 628 S.E.2d 387, 2006 N.C. App. LEXIS 883 (2006).

ARTICLE 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

§ 122C-23. Licensure.

(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, developmentally disabled, or substance abusers without a current license issued by the Secretary.

(b) Each license is issued to the person only for the premises named in the application and shall not be transferrable or assignable except with prior written approval of the Secretary.

(c) Any person who intends to establish, maintain, or operate a licensable facility shall apply to the Secretary for a license. The Secretary shall prescribe by rule the contents of the application forms.

(d) The Secretary shall issue a license if the Secretary finds that the person complies with this Article and the rules of the Commission and Secretary.

(e) Initial licenses issued under the authority of this section shall be valid for not more than 15 months. Licenses shall be renewed annually thereafter and shall expire at the end of the calendar year. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary. Licenses for facilities that have not served any clients during the previous 12 months are not eligible for renewal.

The Secretary may issue a provisional license for a period up to six months to a person obtaining the initial license for a facility. The licensee must demonstrate substantial compliance prior to being issued a full license.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person who is temporarily unable to comply with a rule when the noncompliance does not present an immediate threat to the health and safety of the individuals in the licensable facility. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. A provisional license for an additional period of time to meet the noncompliance may not be issued.

(e1) Except as provided in subsection (e2) of this section, the Secretary shall not enroll any new provider for Medicaid Home or Community Based services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service to any applicant meeting any of the following criteria:

(1) The applicant was the owner, principal, or affiliate of a licensable facility under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 that had its license revoked until 60 months after the date of the revocation.

(2) The applicant is the owner, principal, or affiliate of a licensable facility that was assessed a penalty for a Type A or Type B violation under Article 3 of this Chapter, or any combination thereof, and any one of the following conditions exist:
   a. A single violation has been assessed in the six months prior to the application.
   b. Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.
   c. Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.
   d. Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.

(3) The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) until 60 months after the date of reinstatement or restoration of the license.

(4) The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Article 1A of Chapter 131D until 60 months after the date of reinstatement or restoration of the license.

(e2) The Secretary may enroll a provider described in subsection (e1) of this section if any of the following circumstances apply:

(1) The applicant is an area program or county program providing services under G.S. 122C-141, and there is no other provider of the service in the catchment area.

(2) The Secretary finds that the area program or county program has shown good cause by clear and convincing evidence why the enrollment should be allowed.

(e3) For purposes of subdivision (e1)(2), fines assessed prior to October 23, 2002, are not applicable to this provision. However, licensure or enrollment shall be denied if an applicant's history as a provider under Chapter 131D, Chapter 122C, or Article 7 of Chapter 110 is such that the Secretary has concluded the applicant will likely be unable to comply with licensing or enrollment statutes, rules, or regulations. In the event the Secretary denies licensure or enrollment under this subsection, the reasons for the denial and appeal rights pursuant to Article 3 of Chapter 150B shall be given to the provider in writing.

(f) Upon written application and in accordance with rules of the Commission, the Secretary may for good cause waive any of the rules implementing this Article, provided those rules do not affect the health, safety, or welfare of the individuals within the licensable facility. Decisions made pursuant to this subsection may be appealed to the Commission for a hearing in accordance with Chapter 150B of the General Statutes.

(g) The Secretary may suspend the admission of any new clients to a facility licensed under this Article where the conditions of the facility are detrimental to the health or safety of the clients. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removal of the suspension. In suspending admissions under this subsection, the Secretary shall consider the following factors:

(1) The degree of sanctions necessary to ensure compliance with this section and rules adopted to implement this subsection, and

(2) The character and degree of impact of the conditions at the facility on the health or safety of its clients.

A facility may contest a suspension of admissions under this subsection in accordance with Chapter 150B of the General Statutes. In contesting the suspension of admissions, the facility must file a petition for a contested case within 20 days after the Department mails notice of suspension of admissions to the licensee.

(h) The Department shall charge facilities licensed under this Chapter a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	**Number of Beds**	**Base Fee**	**Per-Bed Fee**
Facilities (non-ICF/MR):	0 beds	$175.00	$0
	1 to 6 beds	$250.00	$0
	More than 6 beds	$350.00	$12.50
ICF/MR Only:	1 to 6 beds	$650.00	$0
	More than 6 beds	$650.00	$12.50

(i) **(Applicable to social setting detoxification facilities licensed on and after August 7, 2003)** A social setting detoxification facility or medical detoxification facility subject to licensure under this Chapter shall not deny admission or treatment to an individual based solely on the individual's inability to pay. (1899, c. 1, s. 60; Rev., s. 4600; C.S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 813, s. 1; c. 1166, s. 7; 1965, c. 1178, ss. 1-3; 1969, c. 954; 1973, c. 476, ss. 133, 152; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1983, c. 718, ss. 1, 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 8; 1987, c. 345, ss. 3, 4; 1989, c. 625, s. 6; 2000-55, s. 3; 2002-164, s. 4.1; 2003-284, s. 34.8(a); 2003-294, s. 2; 2003-390, s. 3; 2005-276, ss. 41.2(h), 10.40A(d); 2006-66, s. 10.23.)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 10.23, effective July 1, 2006, in subsection (h), deleted "that have licensed beds" following "under this Chapter," and rewrote the table listing the per-bed fees.

ARTICLE 3.

Clients' Rights and Advance Instruction.

Part 1. Client's Rights.

§ 122C-52. Right to confidentiality.

CASE NOTES

Mental Health Records Previously Admitted Into Evidence In Parental Rights Termination Case. — Trial court did not err by considering mental health records of a mother contained within the underlying file and previously admitted into evidence in proceedings to terminate her parental rights, because the mental health records challenged by the mother were originally admitted into evidence during a permanency planning review hearing and were not challenged by the mother at that time. In re J.B., 172 N.C. App. 1, 616 S.E.2d 264, 2005 N.C. App. LEXIS 1589 (2005).

Mental Health Records Admmissible. — Rutherford County Department of Social Services was not precluded from admitting the mother's mental health records into evidence. In re J.S.L., — N.C. App. —, 628 S.E.2d 387, 2006 N.C. App. LEXIS 883 (2006).

§ 122C-54. Exceptions; abuse reports and court proceedings.

CASE NOTES

Mental Health Records Previously Admitted Into Evidence In Parental Rights Termination Case. — Trial court did not err by considering mental health records of a mother contained within the underlying file and previously admitted into evidence in proceedings to terminate her parental rights, because the mental health records challenged by the mother were originally admitted into evidence during a permanency planning review hearing and were not challenged by the mother at that time. In re J.B., 172 N.C. App. 1, 616 S.E.2d 264, 2005 N.C. App. LEXIS 1589 (2005).

Cited in In re J.S.L., — N.C. App. —, 628 S.E.2d 387, 2006 N.C. App. LEXIS 883 (2006).

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 1. Policy.

§ 122C-102. State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services; system performance measures.

(a) Purpose of State Plan. — The Department shall develop and implement a State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services. The purpose of the State Plan is to provide a strategic template regarding how State and local resources shall be organized and used to provide services. The State Plan shall be issued every three years beginning July 1, 2007. It shall identify specific goals to be achieved by the Department, area authorities, and county programs over a three-year period of time and benchmarks for determining whether progress is being made towards those goals. It shall also identify data that will be used to measure progress towards the specified goals. In order to increase the ability of the State, area authorities, county programs, private providers, and consumers to successfully implement the goals of the State Plan, the Department shall not adopt or implement policies that are inconsistent with the State Plan without first consulting with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(b) Content of State Plan. — The State Plan shall include the following:

(1) Vision and mission of the State Mental Health, Developmental Disabilities, and Substance Abuse Services system.

(2) Repealed by Session Laws 2006-142, s. 2(a), effective July 19, 2006.

(3) Protection of client rights and consumer involvement in planning and management of system services.

(4) Provision of services to targeted populations, including criteria for identifying targeted populations.

(5) Compliance with federal mandates in establishing service priorities in mental health, developmental disabilities, and substance abuse.

(6) Description of the core services that are available to all individuals in order to improve consumer access to mental health, developmental disabilities, and substance abuse services at the local level.
(7) Service standards for the mental health, developmental disabilities, and substance abuse services system.
(8) Implementation of the uniform portal process.
(9) Strategies and schedules for implementing the service plan, including consultation on Medicaid policy with area and county programs, qualified providers, and others as designated by the Secretary, intersystem collaboration, promotion of best practices, technical assistance, outcome-based monitoring, and evaluation.
(10) A plan for coordination of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services with the Medicaid State Plan, and NC Health Choice.
(11) A business plan to demonstrate efficient and effective resource management of the mental health, developmental disabilities, and substance abuse services system, including strategies for accountability for non-Medicaid and Medicaid services.
(12) Strategies and schedules for implementing a phased in plan to eliminate disparities in the allocation of State funding across county programs and area authorities by January 1, 2007, including methods to identify service gaps and to ensure equitable use of State funds to fill those gaps among all counties.

(c) State Performance Measures. — The State Plan shall also include a mechanism for measuring the State's progress towards increased performance on the following matters: access to services, consumer-focused outcomes, individualized planning and supports, promotion of best practices, quality management systems, system efficiency and effectiveness, and prevention and early intervention. Beginning October 1, 2006, and every six months thereafter, the Secretary shall report to the General Assembly and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, on the State's progress in these performance areas. (2001-437, s. 1.5; 2006-142, s. 2(a).)

Editor's Note. —

Session Laws 2006-66, s. 10.28, provides: "Independent consultants hired by the Department from funds appropriated in this act for this purpose shall undertake the following tasks:

"(1) Assist DHHS with the strategic planning necessary to develop the revised State Plan as required under G.S. 122C-102. The State Plan shall be coordinated with local and regional crisis service plans by area authorities and county programs.

"(2) Study and make recommendations to increase the capacity of DHHS to implement system reform successfully and in a manner that maintains strong management functions by area authorities and county programs at the local level.

"(3) Assist the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to work with area authorities and county programs to:

"a. Develop and implement five to ten critical performance indicators to be used to hold area authorities and county programs accountable for managing the mental health, developmental disabilities, and substance abuse services system. The performance system indicators shall be implemented no later than six months after the consultant's contract is awarded and in no event later than July 1, 2007.

"b. Standardize the utilization management functions and functions related to person-centered plans.

"c. Implement other uniform procedures for the management functions of area authorities and county programs.

"(4) Provide technical assistance and oversight to private service providers, area authorities, and county programs to ensure that best practices and new services are being delivered with fidelity to the service definition model.

"(5) Provide ongoing and focused technical assistance to area authorities and county programs in the implementation of their administrative and management functions and the establishment and operation of community-based programs. The Secretary shall include in the State Plan a mechanism for monitoring the Department's success in implementing this duty and the progress of area authorities and county programs in achieving these functions.

"(6) Assist the Division with implementing standard forms, contracts, processes, and procedures to be used by all area authorities and county programs with other public and private service providers. These processes and procedures shall include standardized denial codes and a standard policy regarding the coordination of benefits. The independent consultant shall consult with area authorities and county programs regarding the development of these forms, contracts, processes, and procedures. Any document or process developed under this subdivision shall place an obligation upon providers to transmit to area authorities and county programs timely client information and outcome data. The independent consultant shall also recommend language regarding what constitutes a clean claim for purposes of billing. When implementing this subdivision, the independent consultant shall balance the need for area authorities and county programs to exercise discretion in the discharge of their management responsibilities with the need of private service providers for a uniform system of doing business with public entities. The independent consultant shall also (i) identify other areas of standardization that may be implemented without undermining the authority of area authorities and county programs, and (ii) identify and eliminate processes and procedures that are duplicative or result in unnecessary paperwork."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-142, s. 2(b), provides: "The North Carolina Department of Health and Human Services (DHHS) shall review all State Plans for Mental Health, Developmental Disabilities, and Substance Abuse Services, implemented after July 1, 2001, and before July 19, 2006 and produce a single document that contains a cumulative statement of all still applicable provisions of those Plans. This cumulative document shall constitute the State Plan until July 1, 2007.

"DHHS and the Secretary shall also identify those provisions in G.S. 122C-112.1, prior State Plans, and directives or communications by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services that must be adopted as administrative rules in order to be enforceable and undertake to adopt those rules."

Effect of Amendments. — Session Laws 2006-142, s. 2(a), effective July 19, 2006, added "system performance measures" to the section heading; rewrote the previously existing provisions of the section as subsections (a) and (b); and added subsection (c).

Part 2. State, County and Area Authority.

§ 122C-111. Administration.

The Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission and shall operate State facilities. An area director or program director shall (i) manage the public mental health, developmental disabilities, and substance abuse system for the area authority or county program according to the local business plan, and (ii) enforce applicable State laws, rules of the Commission, and rules of the Secretary. The Secretary in cooperation with area and county program directors and State facility directors shall provide for the coordination of public services between area authorities, county programs, and State facilities. The area authority or county program shall monitor the provision of mental health, developmental disabilities, and substance abuse services for compliance with the law, which monitoring and management shall not supersede or duplicate the regulatory authority or functions of agencies of the Department. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 2001-437, s. 1.6; 2002-164, s. 4.2; 2006-142, s. 4(b).)

Effect of Amendments. — Session Laws 2006-142, s. 4(b), effective July 19, 2006, substituted "shall (i) manage the public mental health, developmental disabilities, and substance abuse system for the area authority or county program according to the local business plan, and (ii) enforce" for "shall administer the programs of the area authority or county program, as applicable, and enforce" in the second sentence; and substituted "disabilities" for "disability," and inserted "and management" in the last sentence.

§ 122C-112.1. Powers and duties of the Secretary.

(a) The Secretary shall do all of the following:

(1) Oversee development and implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(2) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary.

(3) Establish a process and criteria for the submission, review, and approval or disapproval of LME business plans submitted by area authorities and county programs for the management of mental health, developmental disabilities, and substance abuse services.

(4) Adopt rules specifying the content and format of LME business plans.

(5) Review LME business plans and, upon approval of the plan, certify the submitting area authority or county program to manage the delivery of mental health, developmental disabilities, and substance abuse services in the applicable catchment area.

(6) Establish comprehensive, cohesive oversight and monitoring procedures and processes to ensure continuous compliance by area authorities, county programs, and all providers of public services with State and federal policy, law, and standards. The procedures shall include the development and use of critical performance measures and report cards for each area authority and county program.

(7) Conduct regularly scheduled monitoring and oversight of area authority, county programs, and all providers of public services. Monitoring and oversight shall be used to assess compliance with the LME business plan and implementation of core LME functions. Monitoring shall also include the examination of LME and provider performance on outcome measures including adherence to best practices, the assessment of consumer satisfaction, and the review of client rights complaints.

(8) Make findings and recommendations based on information and data collected pursuant to subdivision (7) of this subsection and submit these findings and recommendations to the applicable area authority board, county program director, board of county commissioners, providers of public services, and to the Local Consumer Advocacy Office.

(9) Provide ongoing and focused technical assistance to area authorities and county programs in the implementation of the LME functions and the establishment and operation of community-based programs. The technical assistance required under this subdivision includes, but is not limited to, the technical assistance required under G.S. 122C-115.4(d)(2). The Secretary shall include in the State Plan a mechanism for monitoring the Department's success in implementing this duty and the progress of area authorities and county programs in achieving these functions.

(10) Operate State facilities and adopt rules pertaining to their operation.

(11) Develop a unified system of services provided at the community level, by State facilities, and by providers enrolled or under a contract with the State and an area authority or county program.

(12) Adopt rules governing the expenditure of all funds for mental health, developmental disabilities, and substance abuse programs and services.

(13) Adopt rules to implement the appeal procedure authorized by G.S. 122C-151.2.

(14) Adopt rules for the implementation of the uniform portal process.

(15) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.

(16) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252.

(17) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse.

(18) Administer and enforce rules that are conditions of participation for federal or State financial aid.

(19) Carry out G.S. 122C-361.

(20) Monitor the fiscal and administrative practices of area authorities and county programs to ensure that the programs are accountable to the State for the management and use of federal and State funds allocated for mental health, developmental disabilities, and substance abuse services. The Secretary shall ensure maximum accountability by areaauthorities and county programs for rate-setting methodologies, reimbursement procedures, billing procedures, provider contracting procedures, record keeping, documentation, and other matters pertaining to financial management and fiscal accountability. The Secretary shall further ensure that the practices are consistent with professionally accepted accounting and management principles.

(21) Provide technical assistance, including conflict resolution, to counties in the development and implementation of area authority and county program business plans and other matters, as requested by the county.

(22) Develop a methodology to be used for calculating county resources to reflect cash and in-kind contributions of the county.

(23) Adopt rules establishing program evaluation and management of mental health, developmental disabilities, and substance abuse services.

(24) Adopt rules regarding the requirements of the federal government for grants-in-aid for mental health, developmental disabilities, or substance abuse programs which may be made available to area authorities or county programs or the State. This section shall be liberally construed in order that the State and its citizens may benefit from the grants-in-aid.

(25) Adopt rules for determining minimally adequate services for purposes of G.S. 122C-124.1 and G.S. 122C-125.

(26) Establish a process for approving area authorities and county programs to provide services directly in accordance with G.S. 122C-141.

(27) Sponsor training opportunities in the fields of mental health, developmental disabilities, and substance abuse.

(28) Enforce the protection of the rights of clients served by State facilities, area authorities, county programs, and providers of public services.

(29) Adopt rules for the enforcement of the protection of the rights of clients being served by State facilities, area authorities, county programs, and providers of public services.

(30) Prior to requesting approval to close a State facility under G.S. 122C-181(b):

a. Notify the Joint Legislative Commission on Governmental Operations, the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and members of the General Assembly who represent catchment areas affected by the closure; and

b. Present a plan for the closure to the members of the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Senate Appropriations Committee on Health and Human Services for their review, advice, and recommendations. The plan shall address specifically how patients will be cared for after closure, how support services to community-based agencies and outreach services will be continued, and the impact on remaining State facilities. In implementing the plan, the Secretary shall take into consideration the comments and recommendations of the committees to which the plan is presented under this subdivision.

(31) Ensure that the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services is coordinated with the Medicaid State Plan and NC Health Choice.

(32) Implement standard forms, quality measures, contracts, processes, and procedures to be used by all area authorities and county programs with other public and private service providers. The Secretary shall consult with LMEs, CFACs, counties, and qualified providers regarding the development of any forms, processes, and procedures required under this subdivision. Any document, process, or procedure developed under this subdivision shall place an obligation upon providers to transmit to LMEs timely client information and outcome data. The Secretary shall also adopt rules regarding what constitutes a clean claim for purposes of billing.

When implementing this subdivision, the Secretary shall balance the need for LMEs to exercise discretion in the discharge of their LME functions with the need of qualified providers for a uniform system of doing business with public entities.

(33) Develop and implement critical performance indicators to be used to hold LMEs accountable for managing the mental health, developmental disabilities, and substance abuse services system. The performance system indicators shall be implemented no later than July 1, 2007.

(b) The Secretary may do the following:

(1) Acquire, by purchase or otherwise in the name of the Department, equipment, supplies, and other personal property necessary to carry out the mental health, developmental disabilities, and substance abuse programs.

(2) Promote and conduct research in the fields of mental health, developmental disabilities, and substance abuse; promote best practices.

(3) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description that shall be used by the Secretary for the purpose of carrying out mental health, developmental disabilities, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office.

(4) Accept, allocate, and spend any federal funds for mental health, developmental disabilities, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the Department of State Treasurer and shall be appropriated by the General Assembly for the mental health, developmental disabilities, or substance abuse purposes specified.

(5) Enter into agreements authorized by G.S. 122C-346.

(6) Notwithstanding G.S. 126-18, authorize funds for contracting with a person, firm, or corporation for aid or assistance in locating, recruiting, or arranging employment of health care professionals in any facility listed in G.S. 122C-181.

(7) Contract with one or more private providers or other public service agencies to serve clients of an area authority or county program and reallocate program funds to pay for services under the contract if the Secretary finds all of the following:

a. The area authority or county program refuses or has failed to provide the services to clients within its catchment area, or provide specialty services in another catchment area, in a manner that is at least adequate.

b. Clients within the area authority or county program catchment area will either not be served or will suffer an unreasonable hardship if required to obtain the services from another area authority or county program.

c. There is at least one private provider or public service agency within the area authority or county program catchment area, or within reasonable proximity to the catchment area, willing and able to provide services under contract.

Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area authority or county program and to the applicable participating boards of county commissioners of the Secretary's intent to contract and shall provide the area authority or county program and the applicable participating boards of county commissioners an opportunity to be heard.

(8) Contract with one or more private providers or other public service agencies to serve clients from more than one area authority or county program and reallocate the funds of the applicable programs to pay for services under the contract if the Secretary finds either that there is no other area authority or county program available to act as the administrative entity under contract with the provider or that the area authority or county program refuses or has failed to properly manage and administer the contract with the contract provider, and clients will either not be served or will suffer unreasonable hardship if services are not provided under the contract. Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area authority or county program and the applicable participating boards of county commissioners of the Secretary's intent to contract and shall provide the area authority or county program and the applicable participating boards of county commissioners an opportunity to be heard.

(9) Require reports of client characteristics, staffing patterns, agency policies or activities, services, or specific financial data of the area authority, county program, and providers of public services. The reports shall not identify individual clients of the area authority or county program unless specifically required by State law or by federal law or regulation or unless valid consent for the release has been given by the client or legally responsible person. (2001-437, s. 1.7(b); 2006-142, s. 4(m).)

Editor's Note. —
Session Laws 2006-142, s. 2, provides: "The North Carolina Department of Health and Human Services (DHHS) shall review all State Plans for Mental Health, Developmental Disabilities, and Substance Abuse Services, implemented after July 1, 2001, and before July 19, 2006, and produce a single document that con-

tains a cumulative statement of all still applicable provisions of those Plans. This cumulative document shall constitute the State Plan until July 1, 2007. DHHS and the Secretary shall also identify those provisions in G.S. 122C-112.1, prior State Plans, and directives or communications by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services that must be adopted as administrative rules in order to be enforceable and undertake to adopt those rules."

Effect of Amendments. — Session Laws 2006-142, s. 4(m), effective July 19, 2006, rewrote subsection (a).

§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and cities.

(a) **(Effective until July 1, 2007)** A county shall provide mental health, developmental disabilities, and substance abuse services through an area authority or through a county program established pursuant to G.S. 122C-115.1. To the extent this section conflicts with G.S. 153A-77(a), the provisions of G.S. 153A-77(a) control.

(a) **(Effective July 1, 2007)** A county shall provide mental health, developmental disabilities, and substance abuse services through an area authority or through a county program established pursuant to G.S. 122C-115.1. The catchment area of an area authority or a county program shall contain either a minimum population of at least 200,000 or a minimum of six counties. To the extent this section conflicts with G.S. 153A-77(a), the provisions of G.S. 153A-77(a) control.

(a1) **(Effective July 1, 2007)** The Department of Health and Human Services shall reduce by ten percent (10%) annually the administrative funding for area authorities and county programs that do not comply with the catchment area requirements of this section.

(b) Counties shall and cities may appropriate funds for the support of programs that serve the catchment area, whether the programs are physically located within a single county or whether any facility housing a program is owned and operated by the city or county. Counties and cities may make appropriations for the purposes of this Chapter and may allocate for these purposes other revenues not restricted by law, and counties may fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22).

(c) Except as authorized in G.S. 122C-115.1, within a catchment area designated in the business plan pursuant to G.S. 122C-115.2, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Secretary.

(d) Except as otherwise provided in this subsection, counties shall not reduce county appropriations and expenditures for current operations and ongoing programs and services of area authorities or county programs because of the availability of State-allocated funds, fees, capitation amounts, or fund balance to the area authority or county program. Counties may reduce county appropriations by the amount previously appropriated by the county for one-time, nonrecurring special needs of the area authority or county program. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 5, 23; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1989, c. 625, s. 14; 1995 (Reg. Sess., 1996), c. 749, s. 1; 1999-202, s. 1; 2001-437, s. 1.8; 2004-124, s. 10.26(a); 2006-66, s. 10.32(c), (d).)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2007. The second version of subsection (a) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 10.32(c), (d), effective July 1, 2007, inserted the second sentence in subsection (a); and added subsection (a1).

§ 122C-115.1. County governance and operation of mental health, developmental disabilities, and substance abuse services program.

(a) A county may operate a county program for mental health, developmental disabilities, and substance abuse services as a single county or, pursuant to Article 20 of Chapter 160A of the General Statutes, may enter into an interlocal agreement with one or more other counties for the operation of a multicounty program. An interlocal agreement shall provide for the following:

(1) Adoption and administration of the program budget in accordance with Chapter 159 of the General Statutes.

(2) Appointment of a program director to carry out the provisions of G.S. 122C-111 and duties and responsibilities delegated by the county. Except when specifically waived by the Secretary, the program director shall meet all the following minimum qualifications:
   a. Masters degree.
   b. Related experience.
   c. Management experience.
   d. Any other qualifications required under G.S. 122C-120.1.

(3) **(Effective until July 1, 2007)** A targeted minimum population of 200,000 or a targeted minimum number of five counties served by the program.

(4) Compliance with the provisions of this Chapter and the rules of the Commission and the Secretary.

(5) Written notification to the Secretary prior to the termination of the interlocal agreement.

(6) Appointment of an advisory committee. The interlocal agreement shall designate a county manager to whom the advisory committee shall report. The interlocal agreement shall also designate the appointing authorities. The appointing authorities shall make appointments that take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. The membership shall conform to the requirements provided in G.S. 122C-118.1.

(b) Before establishing a county program pursuant to this section, a county board of commissioners shall hold a public hearing with notice published at least 10 days before the hearing.

(c) A county shall ensure that the county program and the services provided through the county program comply with the provisions of this Chapter and the rules adopted by the Commission and the Secretary.

(d) A county program shall submit on a quarterly basis to the Secretary and the board of county commissioners service delivery reports that assess the quality and availability of public services within the county program's catchment area. The service delivery reports shall include the types of services delivered, number of recipients served, and services requested but not delivered due to staffing, financial, or other constraints. In addition, at least annually, a progress report shall be submitted to the Secretary and the board of county commissioners. The progress report shall include an assessment of the progress in implementing local service plans, goals, and outcomes. All reports shall be in a format and shall contain any additional information required by the Secretary or board of county commissioners.

(e) Within 30 days of the end of each quarter of the fiscal year, the program director and finance officer of the county program shall present to each member of the board of county commissioners a budgetary statement and balance sheet that details the assets, liabilities, and fund balance of the county program. This information shall be read into the minutes of the meeting at which it is presented. The program director or finance officer of the county program shall provide to the board of county commissioners ad hoc reports as requested by the board of county commissioners.

(f) In a single-county program, the program director shall be appointed by the county manager. In a multicounty program, the program director shall be appointed in accordance with the terms of the interlocal agreement.

Except when specifically waived by the Secretary, the program director in a single county program shall meet all the following minimum qualifications:

(1) Masters degree.
(2) Related experience.
(3) Management experience.
(4) Any other qualifications required under G.S. 122C-120.1.

(g) In a single-county program, an advisory committee shall be appointed by the board of county commissioners and shall report to the county manager. The appointments shall take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. The membership shall conform to the requirements in G.S. 122C-118.1. In a multicounty program, the advisory committee shall be appointed in accordance with the terms of the interlocal agreement.

(h) The county program may contract to provide services to governmental or private entities, including Employee Assistance Programs.

(i) Except as otherwise specifically provided, this Chapter applies to counties that provide mental health, developmental disabilities, and substance abuse services through a county program. As used in the applicable sections of this Article, the terms "area authority", "area program", and "area facility" shall be construed to include "county program". The following sections of this Article do not apply to county programs:

(1) G.S. 122C-115.3, 122C-116, 122C-117, and 122C-118.1.
(2) G.S. 122C-119 and G.S. 122C-119.1.
(3) G.S. 122C-120 and G.S. 122C-121.
(4) G.S. 122C-127.
(5) G.S. 122C-147.
(6) G.S. 122C-152 and G.S. 122C-153.
(7) G.S. 122C-156.
(8) G.S. 122C-158. (2001-437, s. 1.9; 2006-66, s. 10.32(e); 2006-142, s. 4(f), (g), (i), (j).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall beknown as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 10.32(e), effective July 1, 2007, repealed subdivision (a)(3).

Session Laws 2006-142, s. 4(f), (g), effective July 19, 2006, in subdivision (a)(6) and subsection (g), substituted "The membership" for "At least fifty percent (50%) of the membership," and substituted "G.S. 122C-118.1" for "G.S. 122C-118.1(b)(1)-(4)."

Session Laws 2006-142, s. 4(i), (j), effective January 1, 2007, in subdivision (a)(2), inserted "all" following "director shall meet," added subdivision (a)(2)d, and made minor stylistic changes; and added the second paragraph in subsection (f).

§ 122C-115.2. LME business plan required; content, process, certification.

(a) Every county, through an area authority or county program, shall provide for the development, review, and approval of an LME business plan for the management and delivery of mental health, developmental disabilities, and substance abuse services. An LME business plan shall provide detailed information regarding how the area authority or county program will meet State standards, laws, and rules for ensuring quality mental health, developmental disabilities, and substance abuse services, including outcome measures for evaluating program effectiveness. The business plan shall be in effect for at least three State fiscal years.

(b) Business plans shall include the following:

(1) Description of how the following core administrative functions will be carried out:

a. Planning. — Local services plans that identify service gaps and methods for filling the gaps, ensure the availability of an array of services based on consumer needs, provision of core services, equitable service delivery among member counties, and prescribing the efficient and effective use of all funds for targeted services. Local planning shall be an open process involving key stakeholders.

b. Provider network development. — Ensuring available, qualified providers to deliver services based on the business plan. Development of new providers and monitoring provider performance and service outcomes. Provider network development shall address consumer choice and fair competition. For the purposes of this section, a "qualified provider" means a provider who meets the provider qualifications as defined by rules adopted by the Secretary.

c. Service management. — Implementation of uniform portal process. Service management shall include appropriate level and intensity of services, management of State hospitals/facilities bed days, utilization management, case management, and quality management. If services are provided directly by the area authority or county program, then the plan shall indicate how consumer choice and fair competition in the marketplace is ensured.

d. Financial management and accountability. — Carrying out business functions in an efficient and effective manner, cost-sharing, and managing resources dedicated to the public system.

e. Service monitoring and oversight. — Ensuring that services provided to consumers and families meet State outcome standards and ensure quality performance by providers in the network.

f. Evaluation. — Self-evaluation based on statewide outcome standards and participation in independent evaluation studies.

g. Collaboration. — Collaborating with other local service systems in ensuring access and coordination of services at the local level. Collaborating with other area authorities and county programs and the State in planning and ensuring the delivery of services.

h. Access. — Ensuring access to core and targeted services.

(2) Description of how the following will be addressed:

a. Reasonable administrative costs based on uniform State criteria for calculating administrative costs and costs or savings anticipated from consolidation.

b. Proposed reinvestment of savings toward direct services.

c. Compliance with the catchment area consolidation plan adopted by the Secretary.

d. Based on rules adopted by the Secretary, method for calculating county resources to reflect cash and in-kind contributions of the county.

e. Financial and services accountability and oversight in accordance with State and federal law.

f. The composition, appointments, selection process, and the process for notifying each board of county commissioners of all appointments made to the area authority board.

g. The population base of the catchment area to be served.
h. Use of local funds for the alteration, improvement, and rehabilitation of real property as authorized by and in accordance with G.S. 122C-147.
i. The resources available and needed within the catchment area to prevent out-of-community placements and shall include input from the community public agencies.

(3) Other matters determined by the Secretary to be necessary to effectively and efficiently ensure the provision of mental health, developmental disabilities, and substance abuse services through an area authority or county program.

(c) The county program or area authority proposing the business plan shall submit the proposed plan as approved by the board of county commissioners to the Secretary for review and certification. The Secretary shall review the business plan within 30 days of receipt of the plan. If the business plan meets all of the requirements of State law and standards adopted by the Secretary, then the Secretary shall certify the area authority or county program as a single-county area authority, a single-county program, a multicounty area authority, or a multicounty program. Implementation of the certified plan shall begin within 30 days of certification. If the Secretary determines that changes to the plan are necessary, then the Secretary shall so notify the submitting county program or area authority and the applicable participating boards of county commissioners and shall indicate in the notification the changes that need to be made in order for the proposed program to be certified. The submitting county program or area authority shall have 30 days from receipt of the Secretary's notice to make the requested changes and resubmit the amended plan to the Secretary for review. The Secretary shall provide whatever assistance is necessary to resolve outstanding issues. Amendments to the business plan shall be subject to the approval of the participating boards of county commissioners.

(d) Annually, in accordance with procedures established by the Secretary, each area authority and county program submitting a business plan shall enter into a memorandum of agreement with the Secretary for the purpose of ensuring that State funds are used in accordance with priorities expressed in the business plan. (2001-437, s. 1.9; 2002-164, s. 4.3; 2006-142, s. 4(c).)

Effect of Amendments. — Session Laws 2006-142, s. 4(c), effective July 19, 2006, substituted "LME business plan" for "Business plan" in the section heading; and in subsection (a), inserted "the" preceding "development" near the beginning of the first sentence, substituted "an LME business plan" for "a business plan" in the first and second sentences, and substituted "information regarding" for "information on" in the second sentence.

§ 122C-115.4. Functions of local management entities.

(a) Local management entities are responsible for the management and oversight of the public system of mental health, developmental disabilities, and substance abuse services at the community level. An LME shall plan, develop, implement, and monitor services within a specified geographic area to ensure expected outcomes for consumers within available resources.

(b) The primary functions of an LME include all of the following:

(1) Access for all citizens to the core services described in G.S. 122C-2. In particular, this shall include the implementation of a 24-hour a day, seven-day a week screening, triage, and referral process and a uniform portal of entry into care.

(2) Provider endorsement, monitoring, technical assistance, capacity development, and quality control. An LME may remove a provider's

endorsement if a provider fails to meet defined quality criteria or fails to provide required data to the LME.

(3) Utilization management, utilization review, and determination of the appropriate level and intensity of services including the review and approval of the person centered plans for consumers who receive State-funded services. Concurrent review of person centered plans for all consumers in the LME's catchment area who receive Medicaid funded services.

(4) Authorization of the utilization of State psychiatric hospitals and other State facilities. Authorization of eligibility determination requests for recipients under a CAP-MR/DD waiver.

(5) Care coordination and quality management. This function includes the direct monitoring of the effectiveness of person centered plans. It also includes the initiation of and participation in the development of required modifications to the plans for high risk and high cost consumers in order to achieve better client outcomes or equivalent outcomes in a more cost-effective manner. Monitoring effectiveness includes reviewing client outcomes data supplied by the provider, direct contact with consumers, and review of consumer charts.

(6) Community collaboration and consumer affairs including a process to protect consumer rights, an appeals process, and support of an effective consumer and family advisory committee.

(7) Financial management and accountability for the use of State and local funds and information management for the delivery of publicly funded services.

(c) Subject to all applicable State and federal laws and rules established by the Secretary, an area authority, or county program or consolidated human services agency may contract with a public or private entity for the implementation of LME functions articulated under subsection (b) of this section.

(d) Except as provided in G.S. 122C-142.1 and G.S. 122C-125, the Secretary may not remove from an LME any function enumerated under subsection (b) of this section unless all of the following applies:

(1) The LME fails during the previous three months to achieve a satisfactory outcome on any of the critical performance measures developed by the Secretary under G.S. 122C-112.1(33).

(2) The Secretary provides focused technical assistance to the LME in the implementation of the function. The assistance shall continue for at least six months or until the LME achieves a satisfactory outcome on the performance measure, whichever occurs first.

(3) If, after six months of receiving technical assistance from the Secretary, the LME still fails to achieve or maintain a satisfactory outcome on the critical performance measure, the Secretary shall enter into a contract with another LME or agency to implement the function on behalf of the LME from which the function has been removed.

(e) Notwithstanding subsection (d) of this section, in the case of serious financial mismanagement or serious regulatory noncompliance, the Secretary may temporarily remove an LME function after consultation with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(f) The Commission shall adopt rules regarding the following matters:

(1) The definition of a high risk consumer. Until such time as the Commission adopts a rule under this subdivision, a high risk consumer means a person who has been assessed as needing emergent crisis services three or more times in the previous 12 months.

(2) The definition of a high cost consumer. Until such time as the Commission adopts a rule under this subdivision, a high cost con-

sumer means a person whose treatment plan is expected to incur costs in the top twenty percent (20%) of expenditures for all consumers in a disability group.

(3) The notice and procedural requirements for removing one or more LME functions under subsection (d) of this section. (2006-142, s. 4(d).)

Editor's Note. — Session Laws 2006-142, s. 8, made this section effective July 19, 2006.

Session Laws 2006-66, s. 10.32(b) provides: "The Secretary shall review and revise the LME systems management cost model to provide adequate funds for LMEs tofully implement the functions outlined in G.S 122C-115.4(b) as enacted in Section 4 of this act. The Secretary shall consult with the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services priorto implementing a revised cost model.

"For the 2006-2007 fiscal year and until the revised cost model is implemented, the Department shall maintain the 2005-2006 level of funding to LMEs for all LME functions except the following:

"(1) Up to thirteen million three hundred thirty-three thousand four hundred eighty-four dollars ($13,333,481) for utilization review; and

"(2) Up to twelve million one hundred fifty-six thousand forty-two dollars ($12,156,042) for claims processing.

"Any savings of State appropriations realized from the revised cost model shall be reallocated to State-funded services for mental health, developmental disabilities, and substance abuse services.

"Funds withdrawn for LME administrative functions shall be reallocated to other LMEs to be used to provide mental health, developmental disabilities, and substance abuse services. The ten percent (10%) reduction authorized under G.S. 122C-155(a1), as enacted by this section, is in addition to funding limitations of this subsection."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 122C-117. Powers and duties of the area authority.

(a) The area authority shall do all of the following:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services.

(2) Ensure the provision of services to clients in the catchment area, including clients committed to the custody of the Department of Juvenile Justice and Delinquency Prevention.

(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the Department of Juvenile Justice and Delinquency Prevention the provision of services to clients through area and State facilities.

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary. The area authority shall submit the approved budget to the board of county commissioners and the county manager and provide quarterly reports on the financial status of the program in accordance with subsection (c) of this section.

(5) Assure that the services provided by the county through the area authority meet the rules of the Commission and Secretary.

(6) Comply with federal requirements as a condition of receipt of federal grants.

(7) Appoint an area director in accordance with G.S. 122C-121(d). The appointment is subject to the approval of the board of county commissioners except that one or more boards of county commissioners may waive its authority to approve the appointment. The appointment shall be based on a selection by a search committee of the area

authority board. The search committee shall include consumer board members, a county manager, and one or more county commissioners. The Secretary shall have the option to appoint one member to the search committee.

(8) Develop and submit to the board of county commissioners for approval the business plan required under G.S. 122C-115.2. A multicounty area authority shall submit the business plan to each participating board of county commissioners for its approval. The boards of county commissioners of a multicounty area authority shall jointly submit one approved business plan to the Secretary for approval and certification.

(9) Perform public relations and community advocacy functions.

(10) Recommend to the board of county commissioners the creation of local program services.

(11) Submit to the Secretary and the board of county commissioners service delivery reports, on a quarterly basis, that assess the quality and availability of public services within the area authority's catchment area. The service delivery reports shall include the types of services delivered, number of recipients served, and services requested but not delivered due to staffing, financial, or other constraints. In addition, at least annually, a progress report shall be submitted to the Secretary and the board of county commissioners. The progress report shall include an assessment of the progress in implementing local service plans, goals, and outcomes. All reports shall be in a format and shall contain any additional information required by the Secretary or board of county commissioners.

(12) Comply with this Article and rules adopted by the Secretary for the development and submission of and compliance with the area authority business plan.

(13) Coordinate with Treatment Accountability for Safer Communities for the provision of services to criminal justice clients.

(14) Maintain a 24-hour a day, seven day a week crisis response service. Crisis response shall include telephone and face-to-face capabilities. Crisis phone response shall include triage and referral to appropriate face-to-face crisis providers and shall be initiated within one hour of notification. Crisis services do not require prior authorization but shall be delivered in compliance with appropriate policies and procedures. Crisis services shall be designed for prevention, intervention, and resolution, not merely triage and transfer, and shall be provided in the least restrictive setting possible, consistent with individual and family need and community safety.

(a1) The area authority may contract to provide services to governmental or private entities, including Employee Assistance Programs.

(b) The governing unit of the area authority is the area board. All powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board.

(c) Within 30 days of the end of each quarter of the fiscal year, the area director and finance officer of the area authority shall provide the quarterly report of the area authority to the county finance officer. The county finance officer shall provide the quarterly report to the board of county commissioners at the next regularly scheduled meeting of the board. The clerk of the board of commissioners shall notify the area director and the county finance officer if the quarterly report required by this subsection has not been submitted within the required period of time. This information shall be presented in a format prescribed by the county. At least twice a year, this information shall be presented in person and shall be read into the minutes of the meeting at which it is presented. In addition, the area director or finance officer of the area authority shall provide to the board of county commissioners ad hoc reports as requested by the board of county commissioners.

(d) A multicounty area authority shall provide to each board of county commissioners of participating counties a copy of the area authority's annual audit. The audit findings shall be presented in a format prescribed by the county and shall be read into the minutes of the meeting at which the audit findings are presented. (1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 3, 14, 23; 1981, c. 51, s. 3; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1987, c. 830, s. 47(d); 1989, c. 625, s. 14; 1991, c. 215, s. 1; 1995 (Reg. Sess., 1996), c. 749, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 4(t); 2000-137, s. 4(w).; 2001-437, s. 1.10; 2001-487, s. 79.5; 2005-371, s. 2; 2006-142, s. 3(a).)

Cross References. — As to quarterly reports by mental health, developmental disabilities, and substance abuse services area authority or county program, see § 153A-453.

Editor's Note. —

Session Laws 2006-66, s. 10.26(a)-(e), provides: "(a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of five million two hundred fifty thousand dollars ($5,250,000) for the 2006-2007 fiscal year shall be allocated on a per capita basis and shall be used by area authorities and county programs for operational start-up, capital, or subsidies related to the development and implementation of a plan for a continuum of regional crisis facilities and local crisis services ('crisis plan'). Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this section. As used in this section, the term 'crisis' includes services for individuals with mental illnesses, developmental disabilities, and substance abuse addictions.

"(b) Of the funds appropriated in this act for consultants to aid the Division and LMEs to the Department of Health and Human Services, the sum of two hundred twenty-five thousand dollars ($225,000) for the 2006-2007 fiscal year shall be used by the Department to enter into one or more personal services contracts to provide technical assistance to Local Management Entities to develop and implement the crisis plans required under subsection (a) of this section. In addition to any other factors the Department determines are relevant when selecting the consultant, the Department shall take into consideration whether an applicant has prior experience evaluating crisis services at a local, regional, and statewide level, prior experience assisting State and local public agencies develop and implement crisis services, and the ability to implement its responsibilities within the time frames established under this section. Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this subsection.

"(c) No later than August 15, 2006, the Secretary shall designate between 15 and 25 appropriate groupings of LMEs for the development of regional crisis facilities. As used in this section, the term 'regional crisis facility' means a facility-based crisis unit that serves an area that may be larger than the catchment area of a single LME, but that provides adequate access to a facility by all consumers in the State. The Secretary shall consult with LMEs in determining the regional groupings. The Secretary shall also take into consideration geographical factors, prior LME groupings and partnerships, and existing community facilities.

"(d) With the assistance of the consultant, the area authorities and county programs within a crisis region shall work together to identify gaps in their ability to provide a continuum of crisis services for all consumers and use the funds allocated to them to develop and implement a plan to address those needs. At a minimum, the plan must address the development over time of the following components: 24-hour crisis telephone lines, walk-in crisis services, mobile crisis outreach, crisis respite/oresidential services, crisis stabilization units, 24-hour beds, facility-based crisis, in-patient crisis, and transportation. Options for voluntary admissions to a secured facility must include at least one service appropriate to address the mental health, developmental disability, and substance abuse needs of adults, and the mental health, developmental disability, and substance abuse needs of children. Options for involuntary commitment to a secured facility must include at least one option in addition to admission to a State facility.

"If all area authorities and county programs in a crisis region determine that a facility-based crisis center is needed and sustainable on a long-term basis, the crisis region shall first attempt to secure those services through a community hospital or other community facility. If all the area authorities and county programs in the crisis region determine the region's crisis needs are being met, the area authorities and county programs may use the funds to meet local crisis service needs.

"(e) Each LME shall submit its crisis services plan to the Secretary for review no later than March 1, 2007. The plan shall take into consideration and attempt to utilize all other sources of funds in addition to the funds appropriated under this section. The Secretary shall review each plan to determine whether it meets all the requirements of this section. If the Secretary approves the plan, the LME shall receive implementation funding."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-142, s. 3(a), effective July 19, 2006, in subsection (c), substituted "the quarterly report of the area authority to the county finance officer" for "to each member of the board of county commissioners the quarterly report of the area authority," and inserted the second and third sentences.

§ 122C-118.1. Structure of area board.

(a) An area board shall have no fewer than 11 and no more than 25 members. However, the area board for a multicounty area authority consisting of eight or more counties and serving a catchment area with a population of more than 500,000 may have up to 30 members. In a single-county area authority, the members shall be appointed by the board of county commissioners. Except as otherwise provided, in areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. The boards of county commissioners within the multicounty area shall have the option to appoint the members of the area board in a manner other than as required under this section by adopting a resolution to that effect. The boards of county commissioners in a multicounty area authority shall indicate in the business plan each board's method of appointment of the area board members in accordance with G.S. 122C-115.2(b). These appointments shall take into account sufficient citizen participation, representation of the disability groups, and equitable representation of participating counties. Individuals appointed to the board shall include two individuals with financial expertise, an individual with expertise in management or business, and an individual representing the interests of children. A member of the board may be removed with or without cause by the initial appointing authority. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.

(b) Not more than fifty percent (50%) of the members of the area board shall represent the following:

(1) A physician licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina who, when possible, is certified as having completed a residency in psychiatry.

(2) A clinical professional from the fields of mental health, developmental disabilities, or substance abuse.

(3) At least one family member or individual from a citizens' organization composed primarily of consumers or their family members, representing the interests of individuals:

  a. With mental illness;
  b. In recovery from addiction; or
  c. With developmental disabilities.

(4) At least one openly declared consumer:
  a. With mental illness;
  b. With developmental disabilities; or
  c. In recovery from addiction.

(c) The board of county commissioners may elect to appoint a member of the area authority board to fill concurrently no more than two categories of membership if the member has the qualifications or attributes of the two categories of membership.

(d) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for three years, except that upon the initial formation of an area board one-third shall be appointed for one year, one-third for two years, and all remaining members for three years. Members shall not be appointed for more than two consecutive terms. Board members serving as of July 1, 2006, may remain on the board for one additional term.

(e) Upon request, the board shall provide information pertaining to the membership of the board that is a public record under Chapter 132 of the General Statutes. (2001-437, s. 1.11(b); 2002-159, s. 40(a); 2006-142, s. 4(e).)

Effect of Amendments. — Session Laws 2006-142, s. 4(e), effective July 19, 2006, rewrote the section.

§ 122C-120.1. Job classifications; director and finance officer.

(a) The Office of State Personnel shall develop a job classification for director of an area authority or county program that reflects the skills required of an individual operating a local management entity. The Office of State Personnel shall also review the job classifications for area authority and county program finance officers to determine whether they reflect the skills necessary to manage the finances of a local management entity. The Commission shall adopt a job classification for director and any new or revised job classifications for finance officers no later than December 31, 2006.

(b) The job classifications developed under subsection (a) of this section shall apply to persons newly hired on or after January 1, 2007. (2006-142, s. 4(h).)

Editor's Note. — Session Laws 2006-142, s. 8, made this section effective July 19, 2006.

§ 122C-121. Area director.

(a) The area director is an employee of the area board and shall be appointed in accordance with G.S. 122C-117(7). The area director is the administrative head of the area program.

(b) The area board shall evaluate annually the area director for performance based on criteria established by the Secretary and the area board. In conducting the evaluation, the area board shall consider comments from the board of county commissioners.

(c) In addition to the duties under G.S. 122C-111, the area director shall:

(1) Appoint and supervise area program staff.

(2) Administer area authority services.

(3) Develop the budget of the area authority for review by the area board.

(4) Provide information and advice to the board of county commissioners through the county manager.

(5) Act as liaison between the area authority and the Department.

(d) Except when specifically waived by the Secretary, the area director shall meet all the following minimum qualifications:

(1) Masters degree.

(2) Related experience.

(3) Management experience.

(4) Any other qualifications required under G.S. 122C-120.1. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 2001-437, s. 1.12; 2006-142, s. 4(k).)

Effect of Amendments. — Session Laws 2006-142, s. 4(k), effective July 19, 2006, in subsection (d), inserted "all" following "shall meet" in the introductory language, added subdivision (d)(4); and made minor punctuation changes.

Part 4. Area Facilities.

§ 122C-141. Provision of services.

(a) The area authority or county program shall contract with other qualified public or private providers, agencies, institutions, or resources for the provision of services, and, subject to the approval of the Secretary, is authorized to provide services directly. The area authority or county program shall indicate in its local business plan how services will be provided and how the provision of services will address issues of access, availability of qualified public or private providers, consumer choice, and fair competition. The Secretary shall take into account these issues when reviewing the local business plan and considering approval of the direct provision of services. The Secretary shall develop criteria for the approval of direct service provision by area authorities and county programs in accordance with this section and as evidenced by compliance with the local business plan. For the purposes of this section, a qualified public or private provider is a provider that meets the provider qualifications as defined by rules adopted by the Secretary.

(b) All area authority or county program services provided directly or under contract shall meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. The Secretary may delay payments and, with written notification of cause, may reduce or deny payment of funds if an area authority or county program fails to meet these requirements.

(c) The area authority or board of county commissioners of a county program may contract with a health maintenance organization, certified and operating in accordance with the provisions of Article 67 of Chapter 58 of the General Statutes for the area authority or county program, to provide mental health, developmental disabilities, or substance abuse services to enrollees in a health care plan provided by the health maintenance organization. The terms of the contract must meet the requirements of all applicable State statutes and rules of the Commission and Secretary governing both the provision of services by an area authority or county program and the general and fiscal operation of an area authority or county program and the reimbursement rate for services rendered shall be based on the usual and customary charges paid by the health maintenance organization to similar providers. Any provision in conflict with a State statute or rule of the Commission or the Secretary shall be void; however, the presence of any void provision in that contract does not render void any other provision in that contract which is not in conflict with a State statute or rule of the Commission or the Secretary. Subject to approval by the

Secretary and pending the timely reimbursement of the contractual charges, the area authority or county program may expend funds for costs which may be incurred by the area authority or county program as a result of providing the additional services under a contractual agreement with a health maintenance organization.

(d) If two or more counties enter into an interlocal agreement under Article 20 of Chapter 160A of the General Statutes to be a public provider of mental health, developmental disabilities, or substance abuse services ("public provider"), before an LME may enter into a contract with the public provider, all of the following must apply:

(1) The public provider must meet all the provider qualifications as defined by rules adopted by the Secretary. A county that satisfies its duties under G.S. 122C-115(a) through a consolidated human services agency may not be considered a qualified provider for purposes of this subdivision.

(2) The LME must adopt a conflict of interest policy that applies to all provider contracts.

(3) The interlocal agreement must provide that any liabilities of the public provider shall be paid from its unobligated surplus funds and that if those funds are not sufficient to satisfy the indebtedness, the remaining indebtedness shall be apportioned to the participating counties.

(e) The Secretary shall ensure that there is fair competition among providers. The Department shall study the effect of subsection (d) of this section and shall report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by December 1, 2009. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; c. 614, s. 7; 1985, c. 589, s. 2; 1987, c. 839; 1989, c. 625, s. 16; 2001-437, s. 1.15; 2006-142, s. 4(*l*).)

Effect of Amendments. — Session Laws 2006-142, s. 4(*l*), effective July 19, 2006, added subsections (d) and (e).

§ 122C-142. Contract for services.

(a) When the area authority contracts with persons for the provision of services, it shall use the standard contract adopted by the Secretary and shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. However, an area authority or county program may amend the contract to comply with any court-imposed duty or responsibility. An area authority or county program that is operating under a Medicaid waiver may amend the contract subject to the approval of the Secretary. Terms of the standard contract shall require the area authority to monitor the contract to assure that rules and State statutes are met. It shall also place an obligation upon the entity providing services to provide to the area authority timely data regarding the clients being served, the services provided, and the client outcomes. The Secretary may also monitor contracted services to assure that rules and State statutes are met.

(b) When the area authority contracts for services, it may provide funds to purchase liability insurance, to provide legal representation, and to pay any claim with respect to liability for acts, omissions, or decisions by members of the boards or employees of the persons with whom the area authority contracts. These acts, omissions, and decisions shall be ones that arise out of the performance of the contract and may not result from actual fraud, corruption, or actual malice on the part of the board members or employees.

(1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; 1985, c. 589, s. 2; 2006-142, s. 1; 2006-259, s. 23.)

Effect of Amendments. — Session Laws 2006-142, s. 1, effective July 19, 2006, in subsection (a) in the first sentence, deleted "the area authority" following "the provision of services," and inserted "it shall use the standard contract adopted by the Secretary and," inserted the second sentence, in the fourth sentence, inserted "standard" preceding "contract," and inserted the fifth sentence.

Session Laws 2006-259, s. 23, effective August 23, 2006, inserted the third sentence in subsection (a).

§ 122C-147.1. Appropriations and allocations.

Editor's Note. — Session Laws 2006-32, s. 3, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the following issues and report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly:

"(1) Mechanisms to allow area authorities and county programs to purchase bed days from the State psychiatric hospitals. The LOC shall consider options for holding area authorities and county programs accountable for their use of State psychiatric institutions, provide incentives to increase community capacity, and options for ensuring the State institutions have a sufficient funding stream to ensure quality care to patients and a stable and well-qualified workforce.

"(2) Whether implementation of a Medicaid 1915(b) waiver on a statewide or expanded local basis would strengthen the ability of area authorities and county programs to manage the mental health, developmental disabilities, and substance abuse system. As part of the study, the LOC shall examine the impact of the waiver on Piedmont Behavioral Health's ability to implement its management functions including utilization management for Medicaid services, consumer satisfaction, provider monitoring, use of best practices, and any other matters the LOC determines are relevant. If the LOC determines that a Medicaid 1915(b) waiver would improve the management capacity of area authorities and county programs, it shall also examine whether it would be more appropriate to seek a statewide waiver or whether it would be both possible and advisable for additional area authorities and county programs to seek individual waivers.

"(3) Whether G.S. 122C-147.1 should be amended to modify or repeal the provisions that place funds appropriated by the General Assembly into broad age and disability categories."

Part 4A. Consumer and Family Advisory Committees.

§ 122C-170. Local Consumer and Family Advisory Committees.

(a) Area authorities and county programs shall establish committees made up of consumers and family members to be known as Consumer and Family Advisory Committees (CFACS). A local CFAC shall be a self-governing and a self-directed organization that advises the area authority or county program in its catchment area on the planning and management of the local public mental health, developmental disabilities, and substance abuse services system.

Each CFAC shall adopt bylaws to govern the selection and appointment of its members, their terms of service, the number of members, and other procedural matters. At the request of either the CFAC or the governing board of the area authority or county program, the CFAC and the governing board shall execute an agreement that identifies the roles and responsibilities of each party, channels of communication between the parties, and a process for resolving disputes between the parties.

(b) Each of the disability groups shall be equally represented on the CFAC, and the CFAC shall reflect as closely as possible the racial and ethnic composition of the catchment area. The terms of members shall be three years, and no member may serve more than two consecutive terms. The CFAC shall be composed exclusively of:

(1) Adult consumers of mental health, developmental disabilities, and substance abuse services.

(2) Family members of consumers of mental health, developmental disabilities, and substance abuse services.

(c) The CFAC shall undertake all of the following:

(1) Review, comment on, and monitor the implementation of the local business plan.

(2) Identify service gaps and underserved populations.

(3) Make recommendations regarding the service array and monitor the development of additional services.

(4) Review and comment on the area authority or county program budget.

(5) Participate in all quality improvement measures and performance indicators.

(6) Submit to the State Consumer and Family Advisory Committee findings and recommendations regarding ways to improve the delivery of mental health, developmental disabilities, and substance abuse services.

(d) The director of the area authority or county program shall provide sufficient staff to assist the CFAC in implementing its duties under subsection (c) of this section. The assistance shall include data for the identification of service gaps and underserved populations, training to review and comment on business plans and budgets, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws. (2006-142, s. 5.)

Editor's Note. — Session Laws 2006-142, s. 8, made this Part effective July 19, 2006.

§ 122C-171. State Consumer and Family Advisory Committee.

(a) There is established the State Consumer and Family Advisory Committee (State CFAC). The State CFAC shall be shall be a self-governing and self-directed organization that advises the Department and the General Assembly on the planning and management of the State's public mental health, developmental disabilities, and substance abuse services system.

(b) The State CFAC shall be composed of 21 members. The members shall be composed exclusively of adult consumers of mental health, developmental disabilities, and substance abuse services; and family members of consumers of mental health, developmental disabilities, and substance abuse services. The terms of members shall be three years, and no member may serve more than two consecutive terms. Vacancies shall be filled by the appointing authority. The members shall be appointed as follows:

(1) Nine by the Secretary. The Secretary's appointments shall reflect each of the disability groups. The terms shall be staggered so that terms of three of the appointees expire each year.

(2) Three by the General Assembly upon the recommendations of the President Pro Tempore of the Senate, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(3) Three by the General Assembly upon the recommendations of the Speaker of the House of Representatives, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the

appointees shall be staggered so that the term of one appointee expires every year.

(4) Three by the Council of Community Programs, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(5) Three by the North Carolina Association of County Commissioners, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(c) The State CFAC shall undertake all of the following:

(1) Review, comment on, and monitor the implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(2) Identify service gaps and underserved populations.

(3) Make recommendations regarding the service array and monitor the development of additional services.

(4) Review and comment on the State budget for mental health, developmental disabilities, and substance abuse services.

(5) Participate in all quality improvement measures and performance indicators.

(6) Receive the findings and recommendations by local CFACs regarding ways to improve the delivery of mental health, developmental disabilities, and substance abuse services.

(7) Provide technical assistance to local CFACs in implementing their duties.

(d) The Secretary shall provide sufficient staff to assist the State CFAC in implementing its duties under subsection (c) of this section. The assistance shall include data for the identification of service gaps and underserved populations, training to review and comment on the State Plan and departmental budget, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws.

(e) State CFAC members shall receive the per diem and allowances prescribed by G.S. 138-5 for State boards and commissions. (2006-142, s. 5.)

§§ 122C-172 through 122C-180: Reserved for future codification purposes.

Part 5. State Facilities.

§ 122C-181. Secretary's jurisdiction over State facilities.

Editor's Note. —

Session Laws 2003-314, ss. 3.4(a), (a1), and (b), as amended by Session Laws 2004-124, s. 10.26A(a) and (b), as amended by Session Laws 2005-7, s. 1, and as amended by Session Laws 2006-248, s. 52, provides: "(a) Dorothea Dix Hospital Property Study Commission. — If any of the State-owned real property encompassing the Dorothea Dix Hospital campus is no longer needed by Dorothea Dix Hospital and is not transferred to another State agency or agencies before the sale of any or all of the property to a nongovernmental entity, options for this sale shall be considered by the Dorothea Dix Hospital Property Study Commission. The Commission shall make recommendations on the options for sale of the property to the Joint Legislative Commission on Governmental Operations, the 2005 General Assembly, and the Appropriations Committees of the Senate and the House of Representatives before any sale of any or all parts of the property. The Commission shall terminate upon submission of its final report.

"(a1) The State Property Office, in consultation with the City of Raleigh, shall develop a Master Plan for the Dorothea Dix Campus. The State Property Office shall hire a consultant to assist with the development of the Master Plan. The State Property Office shall examine, among other things, operations for land conservation, mixed-use development, and anticipated State office space needs. The Master Plan shall reflect both State needs and local considerations. The State Property Office shall submit the Master Plan to the Dorothea Dix Property Study Commission no later than September 1, 2005. The Commission shall review the Master Plan and shall make recommendations to the 2006 Session of the 2005 General Assembly.

"In order to enhance communication and feedback regarding the planning process, an oversight committee shall be established to oversee the development of the Master Plan. The oversight committee shall consist of five members: three shall be appointed by the Cochairs of the Dorothea Dix Property Study Commission; one shall be appointed by the Raleigh City Council; and one shall be appointed by the Wake County Board of Commissioners. The oversight committee shall terminate upon the submission of the Master Plan to the Dorothea Dix Property Study Commission.

"(b) Creation and Membership. — The Dorothea Dix Hospital Property Study Commission is created. The Commission shall consist of 11 members, five appointed by the President Pro Tempore of the Senate and five appointed by the Speaker of the House of Representatives. The Secretary of Health and Human Services shall serve as an ex officio member of the Commission."

Session Laws 2006-248, s. 21, provides: "The Dorothea Dix Hospital Property Study Commission shall study and make recommendations regarding the following:

"(1) Balancing complementary public uses of open space, the adaptive re-use of existing facilities, and continued support for mental health services.

"(2) The financial feasibility of the various uses.

"(3) An assessment of financial mechanisms for the implementation and maintenance of the various uses.

"(4) Administrative or governance structures to implement the uses.

"The Commission shall report its findings and recommendations to the 2007 General Assembly by January 31, 2007."

Session Laws 2006-248, s. 1, provides: "This act shall be known as "The Studies Act of 2006."

§ 122C-185. Application of funds belonging to State facilities.

(a) **(Effective until July 1, 2007)** All moneys and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget and Management. All moneys and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed and except as required for deposit with the State treasury, shall not be subject to the provisions of the Executive Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143-18.1.

(a) **(Effective July 1, 2007)** All moneys and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget and Management. All moneys and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed and except as required for deposit with the State treasury, shall not be subject to the provisions of the State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

(b) Proceeds from the transfer or sale of surplus, obsolete, or unused equipment of State facilities shall be deposited and accounted for in accordance with G.S. 143-49(4).

(c) The net proceeds from the sale, lease, rental, or other disposition of real estate owned by a State facility shall be deposited and accounted for in accordance with G.S. 146-30.

G.S. 122C-185(a) and (d) are set out twice. See note.

(d) **(Effective until July 1, 2007)** All proceeds from the operation of vending facilities as defined in G.S. 111-42(d) and operated by State facilities shall be deposited and accounted for in accordance with G.S. 143-12.1.

(d) **(Effective July 1, 2007)** All proceeds from the operation of vending facilities as defined in G.S. 111-42(d) and operated by State facilities shall be deposited and accounted for in accordance with the State Budget Act, Chapter 143C of the General Statutes.

(e) All other revenues and other receipts collected by a State facility shall be deposited to the credit of the State treasury in accordance with G.S. 147-77. (1899, c. 1, s. 34; Rev., s. 4552; C.S., s. 6167; 1963, c. 1166, s. 13; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 68.)

Subsections (a) and (d) Set Out Twice. — The first versions of subsections (a) and (d) set out above are effective until July 1, 2007. The second versions of subsections (a) and (d) set out above are effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 68, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (a), substituted "State Budget Act" for "Executive Budget Act," and substituted "G.S. 143C-8-8 and G.S. 143C-8-9" for "G.S. 143-18.1"; and in subsection (d), substituted "the State Budget Act, Chapter 143C of the General Statutes" for "G.S. 143-12.1."

ARTICLE 5.

Procedures for Admission and Discharge of Clients.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

§ 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, effective July 1, 2003 and expiring October 1, 2007, provides: "The Secretary of Health and Human Services may, upon request of a phase-one local management entity, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

"(1) The Secretary has received a request from a phase-one local management entity to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the local management entity shall be submitted as part of the entity's local business plan and shall specifically describe:

"a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

"b. How the waiver will enable the local management entity to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

"c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

"d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

"(2) The Secretary shall review the request and may approve it upon finding that:

"a. The request meets the requirements of this section.

"b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

"c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

"d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

"(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services on or before July 1, 2006.

"(4) The waiver granted by the Secretary under this section shall be in effect until October 1, 2007.

"(5) The Secretary may grant a waiver under this section to up to five local management entities that have been designated as phase-one entities as of July 1, 2003.

"(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

"(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.

"(8) The local management entity shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 122C-262. Special emergency procedure for individuals needing immediate hospitalization.

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, effective July 1, 2003 and expiring October 1, 2007, authorizes the Secretary of Health and Human Services to temporarily waive certain requirements of the mental health commitment statutes to further mental health reform efforts. See same catchline in note to G.S. 122C-261.

"(1) The Secretary has received a request from a phase-one local management entity to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the local management entity shall be submitted as part of the entity's local business plan and shall specifically describe:

"a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

"b. How the waiver will enable the local management entity to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

"c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

"d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

"(2) The Secretary shall review the request and may approve it upon finding that:

"a. The request meets the requirements of this section.

"b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

"c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

"d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

"(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services on or before July 1, 2006.

"(4) The waiver granted by the Secretary under this section shall be in effect until October 1, 2007.

"(5) The Secretary may grant a waiver under this section to up to five local management entities that have been designated as phase-one entities as of July 1, 2003.

"(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

"(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.

"(8) The local management entity shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, effective July 1, 2003 and expiring October 1, 2007, authorizes the Secretary of Health and Human Services to temporarily waive certain requirements of the mental health commitment statutes to further mental health reform efforts. See same catchline in note to G.S. 122C-261.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 122C-268.1. Inpatient commitment; hearing following automatic commitment.

CASE NOTES

Applied in State v. Millsaps, 169 N.C. App. 340, 610 S.E.2d 437, 2005 N.C. App. LEXIS 617 (2005).

§ 122C-270. Attorneys to represent the respondent and the State.

(a) In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill. These special counsel shall serve at the pleasure of the Commission, may not privately practice law, and shall receive annual compensation within the salary range for assistant public defenders as fixed by the Office of Indigent Defense Services. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned in accordance with rules adopted by the Office of Indigent Defense Services. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Director of the Office of Indigent Defense Services, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, counsel for indigent respondents shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for the respondent's representation at the trial level until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself or herself to the facility. If the respondent is transferred to a State facility for the mentally ill, assigned counsel is discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321. (1973, c. 47, s. 2; c. 1408, s. 1; 1977, c. 400, s. 11; 1979, c. 915, s. 12; 1983, c. 275, ss. 1, 2; 1985, c. 589, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 115; 1989, c. 141, s. 12; 1991, c. 257, s. 1; 1995 (Reg. Sess., 1996), c. 739, s. 12(a); 2000-144, s. 42; 2006-264, s. 61(a).)

Effect of Amendments. — Session Laws 2006-264, s. 61(a), effective October 1, 2006, and applicable to appeals filed on or after that date, in subsection (a) deleted "and on appeals held under this Article" at the end of the third sentence, and added the sixth sentence; and rewrote subsection (e).

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

§ 122C-281. Affidavit and petition before clerk or magistrate; custody order.

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, effective July 1, 2003 and expiring October 1, 2007, authorizes the Secretary of Health and Human Services to temporarily waive certain requirements of the mental health commitment statutes to further mental health reform efforts. See same catchline in note to G.S. 122C-261.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 122C-282. Special emergency procedure for violent individuals.

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, effective July 1, 2003 and expiring October 1, 2007, authorizes the Secretary of Health and Human Services to temporarily waive certain requirements of the mental health commitment statutes to further mental health reform efforts. See same catchline in note to G.S. 122C-261.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 122C-283. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, effective July 1, 2003 and expiring October 1, 2007, authorizes the Secretary of Health and Human Services to temporarily waive certain requirements of the mental health commitment statutes to further mental health reform efforts. See same catchline in note to G.S. 122C-261.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 122C-289. Duty of assigned counsel; discharge.

If the respondent is committed, assigned counsel remains responsible for the respondent's representation at the trial level until discharged by order of district court or until the respondent is otherwise unconditionally discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services. (1973, c. 1408, s. 1; 1985, c. 589, s. 2; 2006-264, s. 61(b).)

Effect of Amendments. — Session Laws 2006-264, s. 61(b), effective October 1, 2006, and applicable to appeals filed on or after that date, rewrote the section.

Part 9. Public Intoxication.

§ 122C-303. Use of jail for care for intoxicated individual.

CASE NOTES

Cited in State v. Hocutt, — N.C. App. —, 628 S.E.2d 832, 2006 N.C. App. LEXIS 966 (2006).

§ 122C-401. Use of Camp Butner Hospital authorized.

Editor's Note. —

Session Laws 2006-159, ss. 1 through 3, provide: "1. Findings and Purpose. The General Assembly finds as follows:

"(1) The Camp Butner reservation is administered by the Secretary of the Department of Health and Human Services (hereinafter 'Secretary') in accordance with the provisions of Article 6 of Chapter 122C of the General Statutes (the Camp Butner reservation is variously referred to,in whole or in part, as the Camp Butner reservation, the Town of Butner, and the Community of Butner and in this act shall be referred to as the 'Butner Reservation').

"(2) The Department of Health and Human Services (hereinafter 'Department') owns a water and sewer system (hereinafter 'System') that it has long operated pursuant to G.S. 122C-407 for the benefit of the Butner Reservation, the State institutions located in or near the Butner Reservation, adjacent areas of Granville County, and certain federal correctional institutions.

"(3) The Department has determined that it is in the best interests of the Department, its clients, and the State of North Carolina for the System to be operated as a regional water and sewer system for the benefit of the Butner Reservation, the City of Creedmoor (hereinafter 'Creedmoor'), the Town of Stem (hereinafter 'Stem'), adjacent areas of Granville County, and the State and federal institutions located nearby.

"(4) The Secretary pursuant to the authority vested in her by G.S. 122C-407 entered into a Memorandum of Understanding (hereinafter 'MOU') with the South Granville Water and Sewer Authority, a water and sewer authority organized under and by virtue of Article 1 of Chapter 162A of the General Statutes (hereinafter 'SGWASA') pursuant to which SGWASA, effective January 1, 2006, manages and operates the System.

"(5) The customers of the System have paid for water and sewer over the years the Department has operated the System, and those payments at times have generated surpluses that are held by the Department or on behalf of the Department by the State Treasurer for use for the benefit of the System.

"(6) It is in the best interests of the Department, the southern portion of Granville County including the Butner Reservation, Stem, and Creedmoor, and the State for SGWASA to own and operate the System for the benefit of all interested parties and that certain assets be transferred to SGWASA.

"2.(a) The Governor shall convey on or before January 1, 2007, or as soon thereafter as all conditions set forth herein are met, to SGWASA for the consideration set forth herein all right, title, and interest in and to all of the property, real, personal, and mixed, tangible and intangible, comprising the System owned by the State of North Carolina which is currently managed by SGWASA pursuant to the MOU; provided, however, that SGWASA, prior to said transfer, shall make the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by the State that is secured by the System or by the revenues of the System and which is outstanding as of the date of transfer. A schedule of said assets is on file with the Secretary and with the Executive Director of SGWASA.

"(b) In order to provide SGWASA with a reserve for operations and maintenance expenses and extraordinary repairs and replacements, the Department shall transfer to SGWASA on or before September 1, 2007, from the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General Ledger System (ATBD 701), the sum of two million sixty-nine thousand four hundred thirty-two dollars and fifty cents ($2,069,432.50) which is equal to one-half of one year's total operating expenses of the System, as shown on the Town of Butner Waterand Sewer System Financial Statement Audit Report for the Year Ended June 30, 2005 (hereinafter the 'Audit Report'). If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the remainder of the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General Ledger System (ATBD 701), including all interest and returns thereon, and all Capital Improvement Funds held by the Department for the Town of Butner Enterprise in the North Carolina General Ledger System (BD 725) not otherwise restricted by statute or otherwise obligated for the payment of existing debts, including all interest and returns thereon, shall be transferred by the Department to such successor municipality.

"(c) Except as hereinafter provided, SGWASA shall continue to pay to the Department a monthly sum to be used by the Department to support the operations of the Butner Reservation, set at a baseline of sixty-three thousand nine hundred fifty-seven dollars and seventy-five cents ($63,957.75) for fiscal year 2005-2006, which sum shall be adjusted annually on July 1 to reflect the cost of salary and benefit changes granted to State employees by an act of the General Assembly or by action of the Office of State Personnel; any increases and adjustments required by law for Social Security, retirement rate increases, or longevity; and allowable inflationary cost increases for all operations costs as determined by the North Carolina Office of State Budget and Management each budget cycle and communicated to State agencies for application. This payment shall continue until such date as the majority of the functions of the Department performed at the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina. If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, SGWASA shall pay to such municipal corporation the sum of forty-one thousand six hundred sixty-six dollars and sixty-seven cents ($41,666.67) per month for a period of 240 months from the date of said incorporation. Notwithstanding the foregoing, any payments pursuant to this section to the Department or a municipal corporation incorporated hereafter which assumes the majority of the functions of the Butner Reservation may, to the extent provided in any trust agreement, trust indenture, resolution, order, ordinance, or similar instrument entered or adopted by SGWASA in connection with the issuance of bonds by SGWASA, be made subordinated to the payment of current expenses of the System, the funding of reserves, and the payment of debt service on any indebtedness incurred by SGWASA for the improvement, expansion, and maintenance of the System or to make a payment to the State to retire bonds previously issued by the State for such purpose. For purposes of this section, 'payment of debt service on indebtedness' includes the payments required under any financial instruments entered into by SGWASA in connection with the indebtedness, such as payments under interest rate swap agreements, reimbursement agreements, standby bond purchase agreements, or similar instruments entered into by SGWASA in connection with its bonds.

"(d) Any conveyance of the assets, real, personal, and mixed, transferred pursuant to the provisions of this section shall include a provision that the assets so transferred may revert to the State if SGWASA dissolves, becomes insolvent, or is otherwise unable to meet its obligations as they become due. Such reversion shall be conditioned upon the State making the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA to be outstanding following the reversion of the assets to the State. If, at such time, the primary functions of the department with respect to the Butner Reservation have been assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the assets that otherwise would revert to the State pursuant to this section shall vest in such municipality on the same terms and conditions as if the assets were reverting to the state (including that arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA and to be outstanding following the reversion of the assets to the State be made as a condition to such reversion).

"3. The transfer of the System to SGWASA pursuant to the provisions of this act shall be exempt from the requirements of Article 7, Chapter 146 of the General Statutes. The conveyance of property under this act shall comply with the provisions of Article 16, Chapter 146; provided, however, that the conveyance will be exempt from the provisions of G.S. 146-74. The provisions of this act shall be exempt from all statutes concerning in any way the disposition of personal property owned by the State of North Carolina or any department or agency thereof."

§ 122C-407. Water and sewer system.

Editor's Note. —

Session Laws 2006-159, ss. 1 through 3, provide: "1. Findings and Purpose. The General Assembly finds as follows:

"(1) The Camp Butner reservation is administered by the Secretary of the Department of Health and Human Services (hereinafter 'Secretary') in accordance with the provisions of Article 6 of Chapter 122C of the General Statutes (the Camp Butner reservation is variously referred to,in whole or in part, as the Camp Butner reservation, the Town of Butner, and the Community of Butner and in this act shall be referred to as the 'Butner Reservation').

"(2) The Department of Health and Human Services (hereinafter 'Department') owns a water and sewer system (hereinafter 'System') that it has long operated pursuant to G.S. 122C-407 for the benefit of the Butner Reservation, the State institutions located in or near the Butner Reservation, adjacent areas of Granville County, and certain federal correctional institutions.

"(3) The Department has determined that it is in the best interests of the Department, its clients, and the State of North Carolina for the System to be operated as a regional water and sewer system for the benefit of the Butner Reservation, the City of Creedmoor (hereinafter 'Creedmoor'), the Town of Stem (hereinafter 'Stem'), adjacent areas of Granville County, and the State and federal institutions located nearby.

"(4) The Secretary pursuant to the authority vested in her by G.S. 122C-407 entered into a Memorandum of Understanding (hereinafter 'MOU') with the South Granville Water and Sewer Authority, a water and sewer authority organized under and by virtue of Article 1 of Chapter 162A of the General Statutes (hereinafter 'SGWASA') pursuant to which SGWASA, effective January 1, 2006, manages and operates the System.

"(5) The customers of the System have paid for water and sewer over the years the Department has operated the System, and those payments at times have generated surpluses that are held by the Department or on behalf of the Department by the State Treasurer for use for the benefit of the System.

"(6) It is in the best interests of the Department, the southern portion of Granville County including the Butner Reservation, Stem, and Creedmoor, and the State for SGWASA to own and operate the System for the benefit of all interested parties and that certain assets be transferred to SGWASA.

"2.(a) The Governor shall convey on or before January 1, 2007, or as soon thereafter as all conditions set forth herein are met, to SGWASA for the consideration set forth herein all right, title, and interest in and to all of the property, real, personal, and mixed, tangible and intangible, comprising the System owned by the State of North Carolina which is currently managed by SGWASA pursuant to the MOU; provided, however, that SGWASA, prior to said transfer, shall make the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by the State that is secured by the System or by the revenues of the System and which is outstanding as of the date of transfer. A schedule of said assets is on file with the Secretary and with the Executive Director of SGWASA.

"(b) In order to provide SGWASA with a reserve for operations and maintenance expenses and extraordinary repairs and replacements, the Department shall transfer to SGWASA on or before September 1, 2007, from the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General Ledger System (ATBD 701), the sum of two million sixty-nine thousand four hundred thirty-two dollars and fifty cents ($2,069,432.50) which is equal to one-half of one year's total operating expenses of the System, as shown on the Town of Butner Waterand Sewer System Financial Statement Audit Report for the Year Ended June 30, 2005 (hereinafter the 'Audit Report'). If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the remainder of the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General Ledger System (ATBD 701), including all interest and returns thereon, and all Capital Improvement Funds held by the Department for the Town of Butner Enterprise in the North Carolina General Ledger System (BD 725) not otherwise restricted by statute or otherwise obligated for the payment of existing debts, including all interest and returns thereon, shall be transferred by the Department to such successor municipality.

"(c) Except as hereinafter provided, SGWASA shall continue to pay to the Department a monthly sum to be used by the Department to support the operations of the Butner Reservation, set at a baseline of sixty-three thousand nine hundred fifty-seven dollars and seventy-five cents ($63,957.75) for fiscal year 2005-2006, which sum shall be adjusted annually on July 1 to reflect the cost of salary and benefit changes granted to State employees by an act of the General Assembly or by action of the Office of State Personnel; any increases and adjustments required by law for Social Security, retirement rate increases, or longevity; and allowable inflationary cost increases for all operations costs as determined by the North Carolina Office of State Budget and Management each budget cycle and communicated to State agencies for application. This payment shall continue until such date as the majority of the functions of the Department performed at the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina. If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, SGWASA shall pay to such municipal corporation the sum of forty-one thousand six hundred sixty-six dollars and sixty-seven cents ($41,666.67) per month for a period of 240 months from the date of said incorporation. Notwithstanding the foregoing, any payments pursuant to this section to the Department or a municipal corporation incorporated hereafter which assumes the majority of the functions of the Butner Reservation may, to the extent provided in any trust agreement, trust indenture, resolution, order, ordinance, or similar instrument entered or adopted by SGWASA in connection with the issuance of bonds by SGWASA, be made subordinated to the payment of current expenses of the System, the funding of reserves, and the payment of debt service on any indebtedness incurred by SGWASA for the improvement, expansion, and maintenance of the System or to make a payment to the State to retire bonds previously issued by the State for such purpose. For purposes of this section, 'payment of debt service on indebtedness' includes the payments required under any financial instruments entered into by SGWASA in connection with the indebtedness, such as payments under interest rate swap agreements, reimbursement agreements, standby bond purchase agreements, or similar instruments entered into by SGWASA in connection with its bonds.

"(d) Any conveyance of the assets, real, personal, and mixed, transferred pursuant to the provisions of this section shall include a provision that the assets so transferred may revert to the State if SGWASA dissolves, becomes insolvent, or is otherwise unable to meet its obligations as they become due. Such reversion shall be conditioned upon the State making the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA to be outstanding following the reversion of the assets to the State. If, at such time, the primary functions of the department with respect to the Butner Reservation have been assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the assets that otherwise would revert to the State pursuant to this section shall vest in such municipality on the same terms and conditions as if the assets were reverting to the state (including that arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA and to be outstanding following the reversion of the assets to the State be made as a condition to such reversion).

"3. The transfer of the System to SGWASA pursuant to the provisions of this act shall be exempt from the requirements of Article 7, Chapter 146 of the General Statutes. The conveyance of property under this act shall comply with the provisions of Article 16, Chapter 146; provided, however, that the conveyance will be exempt from the provisions of G.S. 146-74. The provisions of this act shall be exempt from all statutes concerning in any way the disposition of personal property owned by the State of North Carolina or any department or agency thereof."

§ 122C-408. Butner Public Safety Division of the Department of Crime Control and Public Safety; jurisdiction; fire and police district.

Cross References. — As to cooperation between law-enforcement agencies, see G.S. 160A-288. As to assistance to State law-enforcement agencies, see G.S. 160A-288.2.

§ 122C-410. Authority of county or city over Camp Butner reservation.

Editor's Note. —

Session Laws 1983, c. 830, s. 1, as rewritten by Session Laws 2005-276, s. 43.3, and as amended by Session Laws 2006-4, s. 1, provides: "(a) The territorial jurisdiction of the Butner Police and Fire Protection district shall include: (i) any property formerly a part of the original Camp Butner reservation, including both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the State; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of said reservation and said sanitary district.

"(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durhamand Granville Counties shall annually collect a tax of twenty-five cents (25) per one hundred dollars ($100.00) valuation of all real and personal property in the portions of said district in their respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the State Treasurer for deposit inthe General Fund.

"(c) As long as G.S. 122C-410 prevents annexation by any municipality of any territory within the Camp Butner reservation without written approval of the Secretary of Health and Human Services, no municipality may annex under Article 4A of Chapter 160A of the General Statutes any part of the Lyons Station Sanitary District."

Chapter 126.

State Personnel System.

Article 1.

State Personnel System Established.

Sec.
126-5. Employees subject to Chapter; exemptions.

Article 2.

Salaries, Promotions, and Leave of State Employees.

126-7.1. Posting requirement; State employees receive priority consideration; reduction-in-force rights; Work First hiring.

Sec.
126-8.1. Paid leave for certain athletic competition.
126-8.5. (Effective July 1, 2007) Discontinued service retirement allowance and severance wages for certain State employees.

Article 5.

Political Activity of Employees.

126-14.4. Remedies.
126-15.1. Probationary State employee defined.

ARTICLE 1.

State Personnel System Established.

§ 126-1. Purpose of Chapter; application to local employees.

Editor's Note. —

Session Laws 2006-66, s. 22.15A(a) provides: "Except as provided in subsection (b) of this section and notwithstanding any other provision of law, the State Personnel Commission, the Office of State Personnel, and each State department, agency, and institution shall suspend further implementation of career banding pending subsequent action by the General Assembly after its review of the State Personnel Act, including the traditional graded classification system and career banding. It is the intent of the 2005 General Assembly to authorize a legislative study commission to review and evaluate the compensation and other personnel policies affecting employees and employing agencies of State government."

Session Laws 2006-66, s. 22.15A(b), as amended by Session Laws 2006-221, s. 21A(a), provides: "Career-banded classifications approved by the State Personnel Commission on or before June 15, 2006, and for which the agency had begun implementation by that date, may continue to be implemented without suspension as otherwise provided for in this section if:

"(1) It is fully and completely implemented no later than February 1, 2007; and

"(2) It is implemented entirely using technical resources provided by the Office of State Personnel and the affected agency or constituent institution."

Session Laws 2006-66, s. 22.15A(c) provides: "Career-banded classifications already approved by the State Personnel Commission on or before June 15, 2006, may be incorporated into the HR/Payroll (BEACON) program development and implementation provided that such inclusion will not delay completion and implementation of the program."

Session Laws 2006-221, s. 21A(b) through (e), provides: "(b) There is created the Legislative Study Commission on the State Personnel Act ('Commission'). The Commission shall consist of 18 members appointed as follows:

"(1) Six members appointed by the Governor, to include:

"a. One person who is a current State employee subject to the State Personnel Act and not currently working in human resources management.

"b. One person who is a current State employee and currently working in human resources management.

"c. One person having experience and expertise in human resources management in a large private sector organization with greater than 500 employees.

"d. One person having experience and expertise in human resources management in a large public sector organization with greater than 500 employees.

"e. Two persons representing the general public.

"(2) Six members appointed by the Speaker of the House of Representatives, to include:

"a. Four members of the House of Representatives.

"b. Two persons representing the general public.

"(3) Six members appointed by the President Pro Tempore of the Senate, to include:

"a. Four members of the Senate.

"b. Two persons representing the general public.

"(c) The Commission shall:

"(1) Review Chapter 126 of the General Statutes, the State Personnel Act, to determine whether the Act should be revised or repealed, in whole or in part.

"(2) Consider the efficacy of changes in policy related to the following: classification system, compensation philosophy, salary structure, merit-based pay, pay equity, pay delivery, and performance evaluation.

"(3) Evaluate career banding as an alternative to the traditional classification system, considering career progression salary adjustments as compared to current compensation increase philosophy, government/private industry best practices, and the real and perceived impact to State employees of moving to a career banding classification system.

"(4) Review any other matter that the Commission finds relevant to its charge.

"(d) The Commission may provide interim reports and shall provide its final report identifying its findings, recommendations, and legislative proposals by May 1, 2008. The Commission shall terminate upon filing its final report.

"(e) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint a cochair for the Commission. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and the Senate Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. With the permission of the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the Commission may meet during the regular legislative session. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 120-3.1. The appointing authority shall fill vacancies. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses."

Session Laws, 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 provides: "If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid."

CASE NOTES

Attorney Fee Awards. — G.S. 6-19.1 authorizes a superior court to award fees to the employee of a county Department of Social Services who has prevailed under the State Personnel Act, G.S. 126-1 et seq.; therefore, a trial court was authorized to award fees for representation of a plaintiff during the administrative proceedings contesting her termination while on medical leave, which was adjudged without cause and wrongful. Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

Cited in Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005).

§ 126-1.1. Career State employee defined.

CASE NOTES

Applied in Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

Cited in Hooper v. North Carolina, 379 F.

Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005).

§ 126-4. Powers and duties of State Personnel Commission.

CASE NOTES

Applied in Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

Cited in Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

§ 126-5. Employees subject to Chapter; exemptions.

(a) The provisions of this Chapter shall apply to:

(1) All State employees not herein exempt, and

(2) All employees of the following local entities:

a. Area mental health, developmental disabilities, and substance abuse authorities.

b. Local social services departments.

c. County health departments and district health departments.

d. Local emergency management agencies that receive federal grant-in-aid funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.

(3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine.

(b) As used in this section:

(1) "Exempt position" means an exempt managerial position or an exempt policymaking position.

(2) "Exempt managerial position" means a position delegated with significant managerial or programmatic responsibility that is essential to the successful operation of a State department, agency, or division, so that the application of G.S. 126-35 to an employee in the position would cause undue disruption to the operations of the agency, department, institution, or division.

(3) "Exempt policymaking position" means a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division, so that a loyalty to the Governor or other elected department head in their respective offices is reasonably necessary to implement the policies of their offices. The term shall not include personnel professionals.

(4) "Personnel professional" means any employee in a State department, agency, institution, or division whose primary job duties involve administrative personnel and human resources functions for that State department, agency, institution, or division.

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) A State employee who is not a career State employee as defined by this Chapter.

(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(3) Employees in exempt policymaking positions designated pursuant to G.S. 126-5(d).
(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity.

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.
(2) Officers and employees of the Judicial Department.
(3) Officers and employees of the General Assembly.
(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.
(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.
(6) Employees of the Office of the Governor that the Governor, at any time, in the Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in the Lieutenant Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
(8) **(Effective until July 1, 2007)** Instructional and research staff, physicians, and dentists of The University of North Carolina.
(8) **(Effective July 1, 2007)** Instructional and research staff, physicians, and dentists of The University of North Carolina, including the faculty of the North Carolina School of Science and Mathematics.
(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.
(10) Repealed by Session Laws 1991, c. 84, s. 1.
(11) **(Repealed effective July 1, 2007)** North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).
(12), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.
(14) Employees of the North Carolina State Ports Authority.
(15) Employees of the North Carolina Global TransPark Authority.
(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.
(17) Repealed by Session Laws 2004-129, s. 37, effective July 1, 2004.
(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.
(20) Employees of the North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes.
(21) Employees of the Clean Water Management Trust Fund.
(22) Employees of the North Carolina Turnpike Authority.
(23) The Executive Administrator and the Deputy Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.

(24) Employees of the Teachers' and State Employees' Comprehensive Major Medical Plan as designated by law or by the Executive Administrator of the Plan.

(25) The North Carolina State Lottery Director and employees of the North Carolina State Lottery.

(26) The Executive Director, associate and assistant directors, and instructional staff of the North Carolina Teacher Academy.

(27) The Chief Administrative Law Judge of the Office of Administrative Hearings.

(28) The Executive Director and the Assistant Director of the U.S.S. North Carolina Battleship Commission.

(c2) The provisions of this Chapter shall not apply to:

(1) Public school superintendents, principals, teachers, and other public school employees.

(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 41.

(3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and employees of the Community Colleges System Office whose salaries are fixed by the State Board of Community Colleges in accordance with the provisions of G.S. 115D-3.

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Health and Human Services, and any other State department, agency or institution, whose salaries shall be set in the same manner as set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) Repealed by Session Laws 1993, c. 321, s. 145(b).

(c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c6) Article 15 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c7) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to exempt managerial positions.

(c8) Except as to the provisions of Articles 5, 6, 7, and 14 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Employees of the University of North Carolina Health Care System.

(2) Employees of the University of North Carolina Hospitals at Chapel Hill, as may be provided pursuant to G.S. 116-37(a)(4).

(3) Employees of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill as may be provided pursuant to G.S. 116-37(a)(4).

(4) Employees of the Medical Faculty Practice Plan, a division of the School of Medicine of East Carolina University.

(d)(1) Exempt Positions in Cabinet Department. — The Governor may designate a total of 100 exempt policymaking positions throughout the following departments:

a. Department of Administration;
b. Department of Commerce;
c. Department of Correction;

  - d. Department of Crime Control and Public Safety;
  - e. Department of Cultural Resources;
  - f. Department of Health and Human Services;
  - g. Department of Environment and Natural Resources;
  - h. Department of Revenue;
  - i. Department of Transportation; and
  - j. Department of Juvenile Justice and Delinquency Prevention.

  The Governor may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in each cabinet department listed above in this sub-subdivision, not to exceed 30 positions in each department. Notwithstanding the provisions of this subdivision, or the other requirements of this subsection, the Governor may at any time increase by five the number of exempt policymaking positions at the Department of Health and Human Services, but at no time shall the total number of exempt policymaking positions exceed 105. The Governor shall notify the General Assembly and the State Personnel Director of the additional positions designated hereunder.

(2) Exempt Positions in Council of State Departments and Offices. — The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this sub-subdivision shall be limited to 20 exempt policymaking positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 20 positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. — The Governor, elected department head, or State Board of Education may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional positions to be designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

(3) Letter. — These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. — In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds

to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to the Governor.

(5) Creation, Transfer, or Reorganization. — The Governor, elected department head, or State Board of Education may designate as exempt a position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. — Subsequent to the designation of a position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor, by an elected department head, or by the State Board of Education in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. — Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision.

(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in G.S. 126-1.1 but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position.

(f) A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is necessary to meet the requirements of subsection (e) of this section, a department head may use salary reserve funds authorized for his department.

(g) No employee shall be placed in an exempt position without 10 working days prior written notification that such position is so designated. A person applying for a position that is designated as exempt must be notified in writing at the time he makes the application that the position is designated as exempt.

(h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982; 1971, c. 1025, s. 2; 1973, c. 476, s. 143; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5; 1979, 2nd Sess., c. 1137, s. 40; 1983, c. 717, s. 41; c. 867, s. 2; 1985, c. 589, s. 38; c. 617, s. 1; c. 757, s. 206(c); 1985 (Reg. Sess., 1986), c. 955, s. 43; c. 1014, ss. 41, 235; c. 1022, s. 9; 1987, c. 320, s. 4; c. 395, s. 1; c. 809, s. 1; c. 850, s. 19; 1987 (Reg. Sess., 1988), c. 1064, s. 3; 1989, c. 168, s. 9; c. 236, s. 3; c. 484; c. 727, s. 218(85); c. 751, s. 7(13); 1991, c. 65, s. 2; c. 84, ss. 1, 2; c. 354, s. 3; c. 749, s. 4; 1991 (Reg. Sess., 1992), c. 879, s. 5; c. 959, s. 85; 1993, c. 145, s. 1; c. 321, s. 145(b); c. 553, ss. 39, 40; 1993 (Reg. Sess., 1994), c. 777, s. 4(g); 1995, c. 141, ss. 3, 5; c. 393, s. 1; 1995 (Reg. Sess., 1996), c. 690, s. 15; 1997-443, ss. 11A.118(a), 11A.119(a), 22.2(b); 1997-520, s. 3; 1998-212, s. 11.8(b); 1999-84, s. 21; 1999-253, s. 1; 1999-434, s. 25; 2000-137, s. 4(nn); 2000-147, s. 4; 2000-148, s. 3; 2001-92, s. 2; 2001-424, s. 32.16(a); 2001-474, s. 15; 2001-487, ss. 21(d), 30(a), (b); 2002-126, s. 28.4; 2002-133, s. 4; 2004-124, s. 31.27(b); 2004-129, s. 37; 2005-276, s. 29.34(b); 2005-344, s. 9; 2006-66, ss. 9.11(y), (z), 9.17(e), 18.2(e); 2006-204, s. 2; 2006-221, s. 20; 2006-259, s. 49; 2006-264, s. 11.)

Subdivision (c1)(8) Set Out Twice. — The first version of subdivision (c1)(8) set out above is effective until July 1, 2007. The second version of subdivision (c1)(8) set out above is effective July 1, 2007.

Subdivision (c1)(11) is repealed effective July 1, 2007, by Session Laws 2006-66, s. 9.11(z).

Editor's Note. —

Session Laws 2006-66, s. 18.2(e), which added subdivision (c1)(26), was added by Session Laws 2006-221, s. 20, and amended by Session Laws 2006-259, s. 49, which recodified (c1)(26) as (c1)(27). The subdivision was then redesignated as (c1)(28) at the direction of the Revisor of Statutes.

Session Laws 2006-259, s. 49, provides: "If House Bill 2762, 2005 Regular Session [2006-204], becomes law, then G.S. 166-5(c1)(26), as enacted by that act, is recodified as G.S. 126-5(c1)(27) [now (c1)(28)]."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-249, s. 3, provides: "Personnel. — For the purpose of improving efficiency and cost-effectiveness of Plan operations, the Executive Administrator and Board of Trustees of the North Carolina State Health Plan may create eight new full-time positions, five of which shall be subject to the State Personnel Act under G.S. 126-5, and three of which shall be exempt from the State Personnel Act under G.S. 126-5(c). The Executive Administrator and Board of Trustees may use up to five hundred sixty-three thousand one hundred six dollars ($563,106) of available funds to support these positions."

Effect of Amendments. —

Session Laws 2006-66, ss. 9.11(y) and (z), effective July 1, 2007, substituted "North Carolina, including the faculty of the North Carolina School of Science and Mathematics" for "North Carolina" at the end of subdivision (c1)(8); and repealed subdivision (c1)(11), relating to employees of the North Carolina School of Science and Mathematics.

Session Laws 2006-66, s. 9.17(e), effective January 1, 2007, except that the General Assembly and the Governor may make appointments prior to that date for terms beginning January 1, 2007, added subdivision (c1)(26).

Session Laws 2006-66, s. 18.2(e), as added by 2006-221, s. 20, effective July 1, 2006, added subdivision (c1)(27).

Session Laws 2006-204, s. 2, effective August 8, 2006, added subdivision (c1)(26) (now (c1)(28)).

Session Laws 2006-264, s. 11, effective August 27, 2006, substituted "G.S. 126-1.1" for "subsection (c)(1) above" in subdivision (e)(1).

CASE NOTES

Former Department of Social Services Employee. — Applicability of the just cause requirement set forth in G.S. 126-5(a)(2) is determined by the permanency of employment and not by months of service; therefore, a terminated employee who worked less than 24 months before being terminated while on medical leave was entitled to file a contested case based on a lack of just cause since she had been an employee of the Department of Social Services, which was a local social services department. Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

Application to District Attorneys. — Since an investigatorial assistant's public statements criticizing the district attorney's discretionary decisions and the disruption of his office's working relationship with law enforcement agencies were sufficient reasons, standing alone, to terminate the investigatorial assistant's at will employment, the district attorney's decision to terminate him rested within his lawful and discretionary scope of authority; because the investigatorial assistant's termination was not injurious to the public or against the public good, there was no evidence to establish a genuine issue of material fact to support a claim for wrongful discharge against the district attorney. Hines v. Yates, 171 N.C. App. 150, 614 S.E.2d 385, 2005 N.C. App. LEXIS 1267 (2005).

Cited in Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005).

ARTICLE 2.

Salaries, Promotions, and Leave of State Employees.

§ 126-7.1. Posting requirement; State employees receive priority consideration; reduction-in-force rights; Work First hiring.

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted within at least the following:

(1) The personnel office of the agency, department, or institution having the vacancy; and

(2) The particular work unit of the agency, department, or institution having the vacancy

in a location readily accessible to employees. If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(a1) State employees to be affected by a reduction in force shall be notified of the reduction in force as soon as practicable, and in any event, no less than 30 days prior to the effective date of the reduction in force.

(a2) The State Personnel Commission shall adopt rules to provide that priority consideration for State employees separated from State employment as the result of reductions in force is to enable a State employee's return to career service at a salary grade and salary rate equal to that held in the most recent position. The State Personnel Commission shall provide that a State employee who:

(1) Accepts a position at the same salary grade shall be paid at the same salary rate as the employee's previous position.

(2) Accepts a position at a lower salary grade than the employee's previous position shall be paid at the same rate as the previous position unless the salary rate exceeds the maximum of the new salary grade. When the salary rate exceeds the maximum of the salary grade, the employee's new salary rate shall be reduced to the maximum of the new salary grade.

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee subject to this section:

(1) Applies for another position of State employment that would constitute a promotion and;

(2) Has substantially equal qualifications as an applicant who is not a State employee

then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

(c1) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force:

(1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and

(2) Is determined qualified for that position

then within all State agencies, the State employee shall receive priority consideration over all other applicants but shall receive equal consideration with other applicants who are current State employees not affected by the reduction in force. This priority shall remain in effect for a period of 12 months from the date the employee receives notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be considered as equal. The reduction-in-force priority created by this subsection shall be administered in accordance with rules promulgated by the State Personnel Commission.

(c2) If the applicants for reemployment for a position include current State employees, a State employee with more than 10 years of service shall receive priority consideration over a State employee having less than 10 years of service in the same or related position classification. This reemployment priority shall be given by all State departments, agencies, and institutions with regard to positions subject to this Chapter.

(d) "Qualifications" within the meaning of subsection (c) of this section shall consist of:

(1) Training or education;

(2) Years of experience; and

(3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for.

(e) Each State agency, department, and institution is encouraged to hire into State government employment qualified applicants who are current or former Work First Program participants.

(f) Each State agency, department, institution, university, community college, and local education agency shall verify, in accordance with the Basic Pilot Program administered by the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each individual's legal status or authorization to work in the United States after hiring the individual as an employee to work in the United States. (1987, c. 689, s. 2; 1991, c. 65, s. 4; c. 474, s. 1; 1995, c. 141, s. 9; c. 507, s. 7.20(a); 1997-443, s. 12.7(d); 2006-259, s. 23.1(a).)

Editor's Note. — Session Laws 2006-259, s. 23.1(b), provides: "This section does not apply to persons under contract or subcontract. This section applies to employees hired on or after January 1, 2007, except that it applies to employees of local education agencies hired on or after March 1, 2007."

Effect of Amendments. — Session Laws 2006-259, s. 23.1(a), effective August 23, 2006, and applicable to persons under contract or subcontract and is applicable to employees hired on or after January 1, 2007, except that it applies to employees of local education agencies hired on or after March 1, 2007, added subsection (f).

CASE NOTES

Priority Consideration. —

Judgment for a former state employee was reversed as the phrase "in the same or related position classification" in G.S. 126-7.1(c2) applied to both state employees with more and less than 10 years of service; as the employee did not have more than 10 years of service in the same or related position classification, she was not entitled to priority consideration for a vacant position. Wilkins v. N.C. State Univ., — N.C. App. —, 631 S.E.2d 221, 2006 N.C. App. LEXIS 1399 (2006).

Phrase "in the same or related position classification" in G.S. 126-7.1(c2) applies to both state employees with more and less than 10 years of service. Wilkins v. N.C. State Univ., — N.C. App. —, 631 S.E.2d 221, 2006 N.C. App. LEXIS 1399 (2006).

§ 126-8.1. Paid leave for certain athletic competition.

(a) As used in this section, the term "United States team" includes any group leader, coach, official, trainer, or athlete who is a member of an official United States delegation in Pan American, Olympic or international athletic competition.

(b) Any State employee or public school employee paid by State funds who has been chosen to be a member of a United States team for Pan American, Olympic or international competition shall be granted paid leave, in addition to annual and sick leave that person is otherwise entitled to, for the sole purpose of training for and competing in that competition. The paid leave shall be for the period of the official training camp and competition or 30 days a year, whichever is less.

(c) **(Effective until July 1, 2007)** The Department of Administration may adopt such rules and regulations as are reasonable and necessary to carry out the provisions of this section, with the approval of the Governor. Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission.

(c) **(Effective July 1, 2007)** The Department of Administration may adopt such rules and regulations as are reasonable and necessary to carry out the provisions of this section, with the approval of the Governor. (1979, c. 708; 1983, c. 717, s. 42; 1985, (Reg. Sess., 1986), c. 955, ss. 44, 45; 2006-203, s. 69.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 2007. The second version of subsection (c) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act [July 1, 2007] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 69, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last sentence of (c), which read: "Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission."

§ 126-8.5. (Effective July 1, 2007) Discontinued service retirement allowance and severance wages for certain State employees.

(a) When the Director of the Budget determines that the closing of a State institution or a reduction in force will accomplish economies in the State Budget, he shall pay either a discontinued service retirement allowance or severance wages to any affected State employee, provided reemployment is not available. As used in this section, "economies in the State Budget" means economies resulting from elimination of a job and its responsibilities or from a lack of funds to support the job. In determining whether to pay a discontinued service retirement allowance or severance wages, the Director of the Budget shall consider the recommendation of the department head involved and any recommendation of the State Personnel Director. Severance wages shall not be paid to an employee who chooses a discontinued service retirement. Severance wages shall not be subject to employer or employee retirement contributions. Severance wages shall be paid according to the policies adopted by the State Personnel Commission.

Notwithstanding any other provisions of the State's retirement laws, any employee of the State who is a member of the Teachers' and State Employees' Retirement System or the Law-Enforcement Officers' Retirement System and who has his job involuntarily terminated as a result of economies in the State Budget may be entitled to a discontinued service retirement allowance, subject to the approval of the employing agency and the availability of agency funds. An unreduced discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 55 years of age; or a discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 50 years of age, reduced by one-fourth of one percent (¼ of 1%) for each month that retirement precedes his fifty-fifth birthday. In cases where a discontinued service retirement allowance is approved, the employing agency shall make a lump sum payment to the Administrator of the State Retirement Systems equal to the actuarial present value of the additional liabilities imposed upon the System, to be determined by the System's consulting actuary, as a result of the discontinued service retirement, plus an administrative fee to be determined by the Administrator.

The salary used to determine severance wages under this section is the last annual salary except that if the employee was promoted within the previous 12 months, the last annual salary is that annual salary prior to the promotion. If the annual salary prior to the promotion is used, it shall be adjusted to account for any across-the-board legislative salary increases. Excluded from any calculation are any benefits such as, but not limited to, overtime pay, shift pay, holiday premium, or longevity pay.

(b) Any employee separated from State government and paid severance wages under this section shall not be employed under a contractual arrangement by any State agency, other than the constituent institutions of The University of North Carolina and the constituent institutions of the North Carolina Community College System, until 12 months have elapsed since the separation. This subsection does not affect any reduction in force rights that the employee may have. (1979, c. 838, s. 22; 1983, c. 761, s. 225; c. 923, s. 217(R); 1983 (Reg. Sess., 1984), c. 1034, s. 251; 1985 (Reg. Sess., 1986), c. 981, s. 1; c. 1024, s. 20; 1987, c. 177, s. 2; 1989 (Reg. Sess., 1990), c. 1066, s. 36(a); 1998-212, s. 28.28(a); 2006-203, s. 6.)

Editor's Note. — This section was formerly codified as G.S. 143-27.2. It was recodified as G.S. 126-8.5 by Session Laws 2006-203, s. 6, effective July 1, 2007.

Session Laws 2006-203, s. 126, provides: "This act becomes effective July 1, 2007, and applies to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act [July 1, 2007] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Editor's Note. — *The case cited below was decided under former G.S. 143-27.2.*

Voluntary Resignation. — The Legislature has not authorized the expenditure of public funds in the nature of severance pay to public employees who voluntarily resign their position. Leete v. County of Warren, 341 N.C. 116, 459 S.E.2d 232 (1995).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *The opinion cited below was decided under former G.S. 143-27.2*

State Budget Officer Cannot Select Discontinued Service Retirement Allowance Unless Employing Agency Head Has Approved Payment. — The State Budget Officer cannot approve discontinued service retirement allowance when the agency head of the employing agency does not recommend (and approve) such an allowance, even if state funds are available and a state employee meets the age and length of service requirements set forth in this section. See opinion of Attorney General to Mr. David T. McCoy, State Budget Officer, 2001 N.C. AG LEXIS 30 (11/7/01).

Article 5.

Political Activity of Employees.

§ 126-14.4. Remedies.

(a) A State employee or applicant for initial State employment who has reason to believe that he or she was among the pool of the most qualified persons for a position in State government employment and was denied employment or promotion in violation of G.S. 126-14.2 because of political affiliation or political influence may complain directly through the Civil Rights Division of the Office of Administrative Hearings, which shall be responsible for making an initial determination of whether there is probable cause to believe that there has been a violation of G.S. 126-14.2.

The complaining State employee or applicant shall file a complaint with the Civil Rights Division of the Office of Administrative Hearings within 30 days after the complainant receives written notice that the position in question has been filled.

The Civil Rights Division of the Office of Administrative Hearings shall promptly make appropriate formal and informal inquiries in its investigatory, fact-finding role and may consider any matter, document, or statement deemed pertinent to the initial determination, including telephone conversations, in determining if there is probable cause to believe there has been a violation of G.S. 126-14.2. The Civil Rights Division may apply to an administrative law judge in the Office of Administrative Hearings for the issuance of oaths and subpoenas under G.S. 7A-756. The investigation and fact-finding phase of the complaint shall be completed by the Civil Rights Division within 30 days.

(b) The Civil Rights Division of the Office of Administrative Hearings shall notify the person alleged to have been hired in violation of G.S. 126-14.2 of the appeal, and the person may present any information to the Civil Rights Division that is pertinent to the initial determination of probable cause. The person alleged to have been hired in violation of G.S. 126-14.2 shall be notified of the results of the initial determination and shall have a right to intervene in any administrative proceedings pursuant to G.S. 150B-23(d).

(c) Upon an initial determination that there is probable cause to believe there has been a violation of G.S. 126-14.2, the complainant may file within 15 days a petition for a contested case pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B of the General Statutes.

(d) An initial determination by the Civil Rights Division that there is not probable cause to believe there has been a violation of G.S. 126-14.2 shall be conclusive of any rights under that section but shall not be admissible or binding in any separate or subsequent civil action or proceeding.

(e) Within 90 days after the filing of a contested case petition, the administrative law judge shall issue a recommended decision to the State Personnel Commission which shall include findings of fact and conclusions of law and, if the administrative law judge has found a violation of G.S. 126-14.2, an appropriate recommended remedy.

(f) Within 60 days of receipt of the official record by the Office of Administrative Hearings, the State Personnel Commission shall make a final written decision as to whether there has been a violation of G.S. 126-14.2. In any case where a violation is found, the State Personnel Commission shall take suitable action to correct the violation, which may include:

(1) Directing the State agency, department, or institution to declare the position vacant, and to hire from among the most qualified State employees or applicants for initial State employment who had applied for the position, or

(2) Requiring that the vacancy be posted pursuant to this Chapter.

(g) A career State employee with:

(1) Less than 10 years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be given priority consideration for a position at the same salary grade equal to that held in the most recent position before being placed in the exempt managerial position if he or she has to vacate because of violation of G.S. 126-14.2.

(2) 10 or more years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be placed in a comparable position at the same grade and salary equal to that held in the most recent position before being placed in the exempt managerial position if he or she had to vacate because of violation of G.S. 126-14.2. (1997-520, s. 2; 2006-264, s. 12.)

Effect of Amendments. — Session Laws 2006-264, s. 12, effective August 27, 2006, substituted "before being placed in the exempt managerial position" for "prior to the promotion" in subdivisions (g)(1) and (g)(2).

§ 126-15.1. Probationary State employee defined.

As used in this Article, "probationary State employee" means a State employee who is exempt from the Personnel Act only because he has not been continuously employed by the State for the period required by G.S. 126-1.1. (1985, c. 469, s. 4; 1987, c. 282, s. 19; 2006-264, s. 13.)

Effect of Amendments. — Session Laws 2006-264, s. 13, effective August 27, 2006, substituted "G.S. 126-1.1" for "G.S. 126-5(c)" at the end.

ARTICLE 8.

Employee Appeals of Grievances and Disciplinary Action.

§ 126-34.1. Grounds for contested case under the State Personnel Act defined.

CASE NOTES

Construction. —

Applicability of the just cause requirement set forth in G.S. 126-5(a)(2) is determined by the permanency of employment and not by months of service; therefore, a terminated employee who worked less than 24 months before being terminated while on medical leave was entitled to file a contested case based on a lack of just cause since she had been an employee of the Department of Social Services, which was a local social services department. Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

Choice of Remedies. —

Doctrine of administrative exhaustion did not prevent a state trooper from filing a whistleblower claim in a superior court because the state trooper had the choice to pursue the whistleblower claim in either a judicial forum, pursuant to G.S. 126-86, or an administrative forum, pursuant to G.S. 126-34.1, but not both. Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005).

§ 126-35. Just cause; disciplinary actions for State employees.

CASE NOTES

To Whom Article Applicable. —

Applicability of the just cause requirement set forth in G.S. 126-5(a)(2) is determined by the permanency of employment and not by months of service; therefore, a terminated employee who worked less than 24 months before being terminated while on medical leave was entitled to file a contested case based on a lack of just cause since she had been an employee of the Department of Social Services, which was a local social services department. Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

"Just Cause". —

Summary judgment for a state agency employer in an employee's petition for review of his demotion was proper where the conduct admitted by the employee constituted "unacceptable personal conduct," and the State Personnel Commission determined that its regulations and work rules did not contain any qualification or exception for the explanations asserted by the employee. Hilliard v. N.C. Dep't of Corr., 173 N.C. App. 594, 620 S.E.2d 14, 2005 N.C. App. LEXIS 2121 (2005).

Summary judgment for a state agency employer in an employee's petition for review of his demotion was proper where the conduct admitted by the employee constituted "unacceptable personal conduct," and the State Personnel Commission determined that its regulations and work rules did not contain any qualification or exception for the explanations asserted by the employee. Hilliard v. N.C. Dep't of Corr., 173 N.C. App. 594, 620 S.E.2d 14, 2005 N.C. App. LEXIS 2121 (2005).

Dismissal Upheld. —

Substantial evidence supported an administrative law judge's (ALJ) ruling that the North Carolina Department of Transportation (DOT) had just cause to dismiss an employee for unacceptable personal conduct where he knowingly violated the DOT's Statement of Understanding and Internet Policy as: (1) the employee's denial of knowledge of the Statement of Understanding was not credible, (2) the employee's claim that he was unaware that he had to obtain his supervisor's approval before installing software on his work computer was not believed by the ALJ, (3) the employee admitted not having permission to install software on his computer, and (4) the unauthorized installation of software was inconsistent with the DOT's objective to ensure that its files and computer network system were properly protected. Teague v. N.C. DOT, — N.C. App. —, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

Cited in Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515

(M.D.N.C. Apr. 13, 2005); Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005).

§ 126-36. Appeal of unlawful State employment practice.

CASE NOTES

Cited in Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005).

§ 126-37. Personnel Commission to review Administrative Law Judge's recommended decision and make final decision.

CASE NOTES

Attorney Fee Awards. — G.S. 6-19.1 authorizes a superior court to award fees to the employee of a county Department of Social Services who has prevailed under the State Personnel Act, G.S. 126-1 et seq.; therefore, a trial court was authorized to award fees for representation of a plaintiff during the administrative proceedings contesting her termination while on medical leave, which was adjudged without cause and wrongful. Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

Cited in Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005); Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005).

§ 126-38. Time limit for appeals.

CASE NOTES

Adequacy of Notice. —

Letter to an employee after her termination while on medical leave that expressed sympathy for her medical condition and reiterated facts regarding the employee's termination did not constitute sufficient notice of the decision or action regarding the grievance filed by the employee, which triggered the right to appeal for purposes of G.S. 126-38; because the employer, the Department of Social Services (DSS), failed to provide the notice required under G.S. 150B-23(f) as to appealing her termination, an administrative law judge properly denied the DSS' motion to dismiss the appeal as untimely. Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

§ 126-41. Attorney and witness fees.

CASE NOTES

Attorney Fees. —

Employee who prevailed in a discrimination claim was properly awarded attorneys' fees and costs for representation before the administrative law judge, the North Carolina State Personnel Commission, and the trial court; the trial court did not err in determining that the administrative law judge's award was not unreasonable or inadequate, after reversing the Commission's decision in favor of the state agency the trial court was required to award the employee attorneys' fees and costs, and the trial court provided sufficient notice and time for both parties to respond to its request for affidavits in support of or in opposition to attorneys' fees and costs. Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

ARTICLE 14.

Protection for Reporting Improper Government Activities.

§ 126-84. Statement of policy.

CASE NOTES

Burden of Persuasion. — Claims brought under the North Carolina Whistleblower Act, G.S. 126-84 through 126-88, should be adjudicated according to the following procedures: (1) the plaintiff must endeavor to establish a prima facie case of retaliation under the statute, the plaintiff should include any available direct evidence that the adverse employment action was retaliatory along with circumstantial evidence to that effect; (2) the defendant should present its case, including its evidence as to legitimate reasons for the employment decision; and (3) once all the evidence has been received, the court should determine whether the McDonnell Douglas or Price Waterhouse framework properly applies to the evidence before it. If the plaintiff has demonstrated that he or she engaged in a protected activity and the defendant took adverse action against the plaintiff in his or her employment, and if the plaintiff has further established by direct evidence that the protected conduct was a substantial or motivating factor in the adverse employment action, then the defendant bears the burden to show that its legitimate reason, standing alone, would have induced it to make the same decision; if, however, the plaintiff has failed to satisfy the Price Waterhouse threshold, the case should be decided under the principles enunciated in McDonnell Douglas and Burdine, with the plaintiff bearing the burden of persuasion on the ultimate issue whether the employment action was taken for retaliatory purposes. Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005).

Sufficiency of Complaint. — State trooper's claim for wrongful termination in violation of the North Carolina Whistleblower Act, G.S. 126-84 through 126-88, was wrongfully dismissed where the trooper, who alleged that the actual reason for his termination was his disclosure of a possible abuse of authority in an amended statement that corrected a possibly misleading statement, stated a claim for relief under G.S. 126-84(a). Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005).

Earlier Suit Was Not Basis for Claim Under Whistleblower Act. — Employee was not entitled to seek relief for alleged employment retaliation under the Whistleblower Act, G.S. 126-84, on the theory that his earlier suit seeking reinstatement into his former position constituted reporting to "another appropriate authority" since the earlier suit did not concern matters affecting general public policy. Hodge v. N.C. DOT, — N.C. App. —, 622 S.E.2d 702, 2005 N.C. App. LEXIS 2726 (2005).

§ 126-85. Protection from retaliation.

CASE NOTES

Summary Judgment Not Appropriate. — State trooper's claim for wrongful termination in violation of the North Carolina Whistleblower Act, G.S. 126-84 through 126-88, was wrongfully dismissed for failure to state a cause of action because the trooper, who alleged that the actual reason for his termination was his disclosure of a possible abuse of authority in an amended statement that corrected a possibly misleading statement, stated a claim for relief under G.S. 126-84(a). Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005).

No Private Cause of Action. — The plain language of G.S. 126-85 addresses only state employees and agencies, and nothing in the Whistleblower Act indicates that it was intended to serve as public policy for the public at large; thus, the Act did not create a private cause of action for a former at-will employee's wrongful termination action against his private employer and corporate officers. Hardin v. Belmont Textile Mach., Co., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 54452 (W.D.N.C. Aug. 3, 2006).

§ 126-86. Civil actions for injunctive relief or other remedies.

CASE NOTES

Earlier Suit Was Not Basis for Claim under Whistleblower Act. — Employee was not entitled to seek relief for alleged employment retaliation under the Whistleblower Act, G.S. 126-84, on the theory that his earlier suit seeking reinstatement into his former position constituted reporting to "another appropriate authority" since the earlier suit did not concern matters affecting general public policy. Hodge v. N.C. DOT, — N.C. App. —, 622 S.E.2d 702, 2005 N.C. App. LEXIS 2726 (2005).

Choice of Remedies. —

Doctrine of administrative exhaustion did not prevent a state trooper from filing a whistleblower claim in a superior court because the state trooper had the choice to pursue the whistleblower claim in either a judicial forum, pursuant to G.S. 126-86, or an administrative forum, pursuant to G.S. 126-34.1, but not both. Additionally, the trooper, while he requested an administrative hearing on an issue, did not request a hearing on his whistleblower claim. Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005).

§ 126-88. Notice of employee protections and obligations.

CASE NOTES

Cited in Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005).

Chapter 127A.

Militia.

Article 3.

National Guard.

Sec.
127A-40. Pensions for the members of the North Carolina national guard.

ARTICLE 3.

National Guard.

§ 127A-40. Pensions for the members of the North Carolina national guard.

(a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of eighty dollars ($80.00) per month for 20 years' creditable military service with an additional eight dollars ($8.00) per month for each additional year of such service; provided, however, that the total pension shall not exceed one hundred sixty dollars ($160.00) per month. The requirements for such pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.

(3) Have received an honorable discharge from the North Carolina national guard.

(b) Payment to a retired member of the North Carolina national guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's estate.

(c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of the regular components of the armed forces of the United States will be eligible for benefits under this section.

(d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.

(e) Repealed by Session Laws 1989, c. 792, s. 2.3.

(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the National Guard in receipt of a pension as well as for all active members of the National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former members of the National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the

North Carolina National Guard Pension Fund, which shall include general fund appropriations made to and transferred from the Department of Crime Control and Public Safety. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out his financial responsibilities.

(g) The provisions of this section shall apply to any member or former member of the North Carolina national guard who is qualified for the above retirements with eligibility of such person commencing at age 60 or July 1, 1974, whichever is the later date.

(h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

(h1) Any member or former member of the North Carolina national guard who is qualified for benefits under this section and who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the member's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the member. A plan of deductions pursuant to this subsection shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision. (1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251; 1989, c. 792, s. 2.3; 2002-126, s. 6.4(g); 2005-276, s. 29.27; 2006-66, s. 22.20.)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 22.20, effective July 1, 2006, in the first sentence of subsection (a), substituted "eighty dollars ($80.00)" for "seventy five dollars ($75.00)," "eight dollars ($8.00)" for "seven dollars and fifty cents ($7.50)" and "one hundred sixty dollars ($160.00)" for "one hundred fifty dollars ($150.00)."

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

Sec.
128-1.1. Dual-office holding allowed.

Article 3.

Retirement System for Counties, Cities and Towns.

128-26. Allowance for service.

Sec.
128-28. Administration and responsibility for operation of System.

ARTICLE 1.

General Provisions.

§ 128-1.1. Dual-office holding allowed.

(a) Any person who holds an appointive office, place of trust or profit in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit, or an elective office in either State or local government.

(b) Any person who holds an elective office in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution to hold concurrently one other appointive office, place of trust or profit, in either State or local government.

(c) Any person who holds an office or position in the federal postal system or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs is hereby authorized to hold concurrently therewith one position in State or local government.

(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency required to perform the described functions.

(d) The term "elective office," as used herein, shall mean any office filled by election by the people when the election is conducted by a county or municipal board of elections under the supervision of the State Board of Elections. (1971, c. 697, s. 2; 1975, c. 174; 1987, c. 427, s. 10; 2006-259, s. 24(a).)

Editor's Note. — Session Laws 2006-259, s. 24(b), provides: "This section becomes effective January 1, 2006, and any actions taken between that date and the date this section becomes law that would have been proper if this section had been then in effect are in all respects validated and confirmed, and no office shall be considered to have been vacated."

Effect of Amendments. — Session Laws 2006-259, s. 24(a), effective January 1, 2006, added subsection (c1). See Editor's note.

Article 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

Local Modification. — Catawba: 1995, c. 306, s. 1; 1995 (Reg. Sess., 1996), c. 693, s. 2; Mecklenburg: 1995, c. 532, s. 1; 1995 (Reg. Sess., 1996), c. 693, s. 1; city of Asheville: 1981, c. 737; city of Charlotte: 1947, c. 926, amended by Session Laws 1949, c. 734; 1951, c. 387; 1965, c. 575; 1969, c. 132; 1971, c. 860; c. 903, s. 2; 1973, c. 267; 1983, c. 506; (as to Art. 3) 1985, c. 185; 1987, c. 506; 1987 (Reg. Sess., 1988), c. 1033; 1989, c. 248; c. 770, s. 45; 1991 (Reg. Sess., 1992), c. 830; c. 1030, s. 51.6; 1993 (Reg. Sess., 1994), c. 640, s.1; 1995, c. 171, s. 1; 1999-100, s. 1; 2001-22, 2002-43, ss. 1-5; 2006-117, s. 1, 2; (as to Article 3) city of Fayetteville: 1998-61; city of High Point: 1987, c. 327.

CASE NOTES

Credit Denied to a Self-Insured City for Disability Retirement Payments. — North Carolina Industrial Commission's decision to deny a city credit for disability retirement payments that were made to an injured city employee from a public employee benefits program was not an abuse of discretion under G.S. 97-42 because the city and the employee jointly contributed to the plan, and competent evidence, in the form of testimony as to the funding of the disability benefits plan, existed to support the Commission's findings of fact and conclusions of law. Cox v. City of Winston-Salem, 171 N.C. App. 112, 613 S.E.2d 746, 2005 N.C. App. LEXIS 1161 (2005).

Applied in Myers v. McGrady, 170 N.C. App. 501, 613 S.E.2d 334, 2005 N.C. App. LEXIS 1087 (2005).

§ 128-26. Allowance for service.

(a) Each person who becomes a member during the first year of his employer's participation, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him to that employer prior to the date of participation for which he claims credit.

A participating employer may allow prior service credit to any of its employees on account of: their earlier service to the aforesaid employer; or, their earlier service to any other employer as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State.

A participating employer may allow prior service credit to any of its employees on account of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such service prior to the establishment of the Teachers' and State Employees' Retirement System on July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum an amount calculated on the basis of compensation the employee earned when he first entered membership and the employee contribution rate at that time together with interest thereon from year of first membership to year of payment shall be one half of the calculated cost.

With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the armed forces of the United States if the person returned to the service of his employer within two years after having been honorably discharged, or becoming entitled to be discharged, released, or separated from such armed services; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if he submits satisfactory evidence of the military service claimed and the participating unit of which he is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period in the armed services of the United States up to the date he was first eligible to be separated or released therefrom; provided that he was an employee as defined in G.S. 128-21(10) at the time he entered military service, and either of the following conditions is met:

(1) He returns to service, with the employer by whom he was employed when he entered military service, within a period of two years after he is first eligible to be separated or released from such military service under other than dishonorable conditions.

(2) He is in service, with the employer by whom he was employed when he entered military service, for a period of not less than 10 years after he is separated or released from such armed services under other than dishonorable conditions.

(b) The Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year.

(c) Subject to the above restrictions and to such other rules and regulations as the Board of Trustees may adopt, the Board of Trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service, the Board of Trustees may use for the purpose of this Article the compensation rates which if they had progressed with the rates of salary increase shown in the tables as prescribed in subsection (o) of G.S. 128-28 would have resulted in the same average salary of the member for the five years immediately preceding the date of participation of his employer, as the records show the member actually received.

(d) Any member may, up to his date of retirement and within one year thereafter, request the Board of Trustees to modify or correct his prior service credit.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when this account was closed.

On and after July 1, 1973, a member whose account in the Teachers' and State Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the Teachers' and

State Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely on account of having attained the age of 62 years, in accordance with former G.S. 128-24(3a), may purchase membership service credits for such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 128-30(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction.

On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied.

(f) Effective January 1, 1955, there shall be three classes of prior service certificates, to be designated as Class A, Class B and Class C respectively. Each such certificate issued on account of service rendered to a Class A employer shall be a Class A prior service certificate; each such certificate issued on account of service rendered to a Class B employer shall be a Class B prior service certificate; and each such certificate issued on account of service rendered to a Class C employer shall be a Class C prior service certificate. Each Class C prior service certificate shall specify a prior service benefit percentage rate which shall be three per centum (3%) in the case of any member entitled to such certificate who is, at the date of participation of his employer, in a position covered by the Social Security Act under a federal-State agreement and which shall be five per centum (5%) in the case of a member entitled to such certificate but who at the date of participation of his employer is in a position not so covered.

(g) During periods when a member is on leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 128-30(b)(4). If he is so contributing, the annual rate of compensation paid to such employee immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence.

(h) Creditable service at retirement shall include any service rendered by a member while on leave of absence to serve as a member or officer of the General Assembly which is not creditable toward retirement under the Legislative Retirement Fund provided the allowance of such credit shall be contingent upon the cancellation of service credit in the fund and the transfer of the member's contributions plus accumulated interest from the fund to this System.

(h1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(i) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of five years of prior and current membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal(s). These provisions shall apply equally to retired members who had attained five years of prior and current membership service prior to retirement. The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the amount of the retirement allowance, under any optional allowance elected at the time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

(j) Repealed by Session Laws 1987, c. 617, s. 3.

(j1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service for service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

(1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, and whose membership began on or prior to January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered membership service times the employee contribution rate at that time times the months of service to be purchased with sufficient interest added thereto so as to equal one-half of the cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

(2) For members who complete five years of membership service, and retired members who complete five years of membership service prior

to retirement, and eligible members and retired members covered by paragraph (1) of this subdivision, whose membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of "active duty", as defined in 38 U.S. Code Section 101(21), in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of "active duty", as defined in 38 U.S. Code Section 101(21), as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the national guard or any reserve component of the Armed Forces of the United States, and shall not include periods of "active duty for training", as defined in 38 U.S. Code Section 101(22), or periods of "inactive duty training", as defined in 38 U.S. Code Section 101(23), rendered in any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership or prior service credits transferred to this Retirement System pursuant to G.S. 128-24.

(j2) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump-sum payment determined as follows:

(1) For members who completed 10 years of prior and current membership service, and retired members who completed 10 years of prior and current membership service prior to retirement, and whose membership began on or before January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered membership service, times the employee contribution rate at that time, times the months of service to be purchased, times two, with sufficient interest added thereto so as to equal the full cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

(2) For members who complete five years of prior and current membership service, and retired members who complete five years of prior and current membership service prior to retirement, and eligible members and retired members covered by subdivision (1) of this subsection, whose membership began on or before January 1, 1988,

but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance. Notwithstanding the requirement of five years of current membership service, a member whose membership began prior to the service the member desires to purchase shall be eligible to purchase creditable service under this subdivision upon returning to service as an employee upon completion of a total of five years of membership service and upon completion of one year of current membership service.

Current membership service shall mean membership service earned since the service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State. Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each year of service in this State, with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service.

(k) Notwithstanding any language to the contrary of any provision of this section, or of any repealed provision of this section that was repealed with the inchoate and accrued rights preserved, all repayments and purchases of service credits, allowed under the provisions of this section or of any repealed provision of this section that was repealed with inchoate and accrued rights preserved, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purchases of the actuarial valuation of the System's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. Notwithstanding the foregoing, on and after January 1, 2003, the provisions of this subsection shall not apply to the repayment of contributions withdrawn pursuant to subsection (i) of this section.

(*l*) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

(1) Leaves of Absence Terminated Prior to July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) Leaves of Absence Terminating On and After July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

Whenever the creditable service purchased pursuant to this subsection is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 128-21(5) had the member not been on leave of absence without pay, then the compensation that the member would have received during the purchased period shall be included in calculating the member's average final compensation. In such cases, the compensation that the member would have received during the purchased period shall be based on the annual rate of compensation of the member immediately prior to the leave of absence.

In the case of a law enforcement officer electing to purchase service under this section who is in receipt of benefits under the North Carolina Workers' Compensation Act due to serious bodily injury suffered in the line of duty as a result of an intentional or unlawful act of another, as certified by the head of the employing law enforcement agency, and whose approved leave of absence terminates on or before a return to service on and after August 1, 2006, the employer percentage rate of contribution payable under subdivision (2) of this subsection shall be made by the employer that granted the leave of absence. The cost to the law enforcement officer shall be reduced by the amount paid by the employer. For purposes of this subsection, "serious bodily injury" means bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Nothing in this subsection prevents an employer from voluntarily paying all or a part of the employee portion of the total cost of the service credit purchased, and the employer does not discriminate against any eligible law enforcement officer in this subsection employed by the employer by paying that portion of cost. To the extent paid by the employer, the employee portion paid by the employer shall be credited to the Pension Accumulation Fund; to the extent paid by the member, the employee portion paid by the member shall be credited to the member's annuity savings account. A member shall pay any part of the employee portion of the total cost not paid by the employer.

(m) Omitted Membership Service. — A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

(1) within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or

(2) after 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees; or

(3) after three years of the omission, by the payment of an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service. In the event an employer pays all or a part of the full actuarial cost as determined in subdivision (3) of this subsection, the employer may, at its option, pay such amount either in a lump sum or by increasing its "accrued liability contribution" for the remainder of its accrued liability period. In the event an employer has satisfied its accrued liability contribution, the employer may amortize its portion of the full actuarial cost over a period not to exceed ten years. The expense of making an actuarial valuation to determine the accrued liability contribution or the additional accrued liability contribution, required to amortize the portion of the full actuarial cost paid by the employer, shall be paid by the employer in a lump sum at the time of the actuarial valuation.

(n) Repealed by Session Laws 2002-153, s. 3, effective January 1, 2003.

(o) Credit at Full Cost for Federal Employment. — Notwithstanding any other provisions of this Chapter, a member, upon the completion of five years of membership service, may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the Retirement System; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(p) Part-Time Service Credit. —

(1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time employee of a participating employer as defined in G.S. 128-21(11) or G.S. 135-1(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 128-26(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) Under all requirements and conditions set forth in the preceding subdivision of this subsection, except for the requirement that the

completion of five years of membership service be subsequent to service rendered as a part-time employee, any member with five or more years of membership service standing to his credit may purchase additional membership service for service rendered as a part-time employee of an employer as defined in G.S. 128-21(11) if (i) the member terminates or has terminated employment in any capacity as an employee, (ii) the purchase of the additional membership service causes the member to become eligible to commence an early or service retirement allowance, and (iii) the member immediately elects to commence retirement and become a beneficiary.

(q) Credit at Full Cost for Probationary Employment. — Notwithstanding any other provision of this Chapter, a member may purchase creditable service, prior to retirement, for employment with an employer as defined in this Article when considered to be in a probationary or employer imposed waiting period status and thereby not regularly employed, between date of employment and date of membership service with the retirement system, provided that the employer or former employer of such a member has revoked this probationary employment or waiting period policy.

Provided, the member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the retirement system, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. In no instance shall the amount payable be less than the contributions a member would have made during the employment plus four percent (4%) interest compounded annually.

Nothing contained in this subsection shall prevent an employer from paying all or part of the cost; and, to the extent paid by an employer, payments shall be credited to the Pension Accumulation Fund; and to the extent paid by a member, payments shall be credited to the Annuity Savings Fund; provided, however, an employer may not discriminate against any member or group of members in his employ in paying all or any part of this cost. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms “full cost”, “full liability”, and “full actuarial cost” include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(r) Credit at Full Cost for Temporary Government Employment. — Notwithstanding any other provisions of this Chapter, any member may purchase creditable service for government employment when classified as a temporary employee subject to the conditions that:

(1) The member was employed by an employer as defined in G.S. 128-21(11) or G.S. 135-1(11);
(2) The member’s temporary employment met all other requirements of G.S. 128-21(10), or G.S. 135-1(10) or (25);
(3) The member has completed five years or more of membership service;
(4) The member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
(5) The member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system’s liabilities, and the calculation of the

amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(s) Credit at Full Cost for Employment Not Otherwise Creditable. — Notwithstanding any other provisions of this Chapter, any member may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in any other retirement system or plan, upon completion of five years of membership service by making a lump sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(t) Purchase of Service Credits Through Rollover Contributions From Certain Other Plans. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(u) Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 128-26, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(v) Retroactive Membership Service. — A member who is reinstated to service as an employee as defined in G.S. 128-21(10) retroactively to the date of prior involuntary termination (with backpay and benefits) may be allowed membership service, after submitting clear and convincing evidence of the reinstatement, as follows:

(1) Within 90 days of the involuntary termination, by the payment of employee and employer contributions that would have been paid; or

(2) After 90 days of the involuntary termination, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the retroactive membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the member shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the retroactive membership service.

In the event a member received a return of accumulated contributions subsequent to an involuntary termination as provided in G.S. 128-27(f), the member may redeposit, within 90 days of reinstatement retroactive to the date of prior involuntary termination, in the annuity savings fund by single payment, an amount equal to the total amount he previously withdrew plus regular interest and restore the creditable service forfeited upon receiving his return of accumulated contributions. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4; 1975, c. 205, s. 1; c. 485, ss. 1-3; 1977, c. 973; 1979, c. 866, s. 1; c. 868, ss. 1, 2; c. 1059, s. 1; 1981, c. 557, s. 3; 1981 (Reg. Sess., 1982), c. 1283, s. 1; c. 1396, s. 3; 1983, c. 533, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 231; 1985, c. 407, s. 1; c. 479, s. 196(h); c. 649, ss. 1, 4; 1987, c. 533, s. 2; c. 617, ss. 1-4; c. 717, s. 1; 1987 (Reg. Sess., 1988), c. 1088, ss. 5, 6; c. 1110, s. 8; 1989, c. 255, ss. 1-10; c. 762, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 28; 1991, c. 753, s. 1; 1991 (Reg. Sess., 1992), c. 1017, s. 1; 1995, c. 507, s. 7.23D(a); 1998-71, ss.

1, 2; 1998-214, s. 1; 1999-158, s. 1; 2001-487, s. 82; 2002-71, s. 3; 2002-153, ss. 1-3; 2003-359, ss. 17-19, 22; 2005-91, s. 8; 2006-29, s. 1.)

Effect of Amendments. —
Session Laws 2006-29, s. 1, effective August 1, 2006, and applicable to members who return to service from an approved leave of absence on or after that date, added the last two paragraphs in subdivision (*l*)(2).

§ 128-27. Benefits.

CASE NOTES

Credit Denied to a Self-Insured City for Disability Retirement Payments. — North Carolina Industrial Commission's decision to deny a city credit for disability retirement payments that were made to an injured city employee from a public employee benefits program was not an abuse of discretion under G.S. 97-42 because the city and the employee jointly contributed to the plan, and competent evidence, in the form of testimony as to the funding of the disability benefits plan, existed to support the Commission's findings of fact and conclusions of law. Cox v. City of Winston-Salem, 171 N.C. App. 112, 613 S.E.2d 746, 2005 N.C. App. LEXIS 1161 (2005).

§ 128-28. Administration and responsibility for operation of System.

(a) Vested in Board of Trustees. — The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of this Article are hereby vested in the Board of Trustees: Provided, that all expenses in connection with the administration of the North Carolina Local Governmental Employees' Retirement System shall be charged against and paid from the expense fund as provided in subsection (f) of G.S. 128-30.

(b) Board of Trustees a Body Politic and Corporate; Powers and Authority; Exemption from Taxation. — The Board of Trustees shall be a body politic and corporate under the name Board of Trustees of the North Carolina Local Governmental Employees' Retirement System, and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, and shall not be subject to income taxes.

(c) Members of Board. — The Board shall consist of (i) seven members of the Board of Trustees of the Teachers' and State Employees' Retirement System appointed under G.S. 135-6(b): the State Treasurer; the Superintendent of Public Instruction; the two members appointed by the General Assembly; and the three members appointed by the Governor who are not members of the teaching profession or State employees; and (ii) seven members designated by the Governor:

(1) One member shall be a mayor or a member of the governing body of a city or town participating in the Retirement System;
(2) One member shall be a county commissioner of a county participating in the Retirement System;
(3) One member shall be a law-enforcement officer employed by an employer participating in the Retirement System;
(4) One member shall be a county manager of a county participating in the Retirement System;

(5) One member shall be a city or town manager of a city or town participating in the Retirement System;
(6) One member shall be an active, Fair Labor Standards Act nonexempt, local governmental employee of an employer; and
(7) One member shall be a retired, Fair Labor Standards Act nonexempt, local governmental employee of an employer.

The Governor shall designate seven members on April 1 of years in which an election is held for the office of Governor, or as soon thereafter as possible, and the seven members designated by the Governor shall serve on the Board in addition to the regular duties of their city, town, or county office: Provided, that if for any reason any member appointed pursuant to subdivisions (1) through (6) of this subsection vacates the city, town, or county office or employment which the member held at the time of this designation, the Governor shall designate another member to serve until the next regular date for the designation of members to serve on the Board.

(d) Compensation of Trustees. — The trustees shall be paid during sessions of the Board at the prevailing rate established for members of State boards and commissions, and they shall be reimbursed for all necessary expenses that they incur through service on the Board.

(e) Oath. — Each trustee other than the ex officio members shall, within 10 days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State: Provided, that where a local governmental official designated by the Governor has taken an oath of office in connection with the local governmental office that he holds, the oath for his local governmental office shall be deemed to be sufficient, and he shall not be required to take the oath hereinabove provided.

(f) Voting Rights. — Each trustee shall be entitled to one vote in the Board. A majority of affirmative votes in attendance shall be necessary for a decision by the trustees at any meeting of said Board.

(g) Rules and Regulations. — Subject to the limitations of this Chapter, the Board of Trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this Chapter and for the transaction of its business. The Board of Trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this Chapter.

(h) Officers and Other Employees, Salaries and Expenses. — The Board of Trustees shall elect from its membership a chairman, and shall, by a majority vote of all the members, appoint a director, who may be, but need not be, one of its members. The Board of Trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the Board of Trustees shall approve.

(i) Actuarial Data. — The Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System, and for checking the experience of the System.

(j) Record of Proceedings; Annual Report. — The Board of Trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System.

(k) Legal Adviser. — The Attorney General shall be the legal adviser of the Board of Trustees.

(*l*) Medical Board. — The Board of Trustees shall designate a Medical Board to be composed of not less than three nor more than five physicians not eligible to participate in the Retirement System. If required, other physicians may be employed to report on special cases. The Medical Board shall arrange for and pass upon all medical examinations required under the provisions of this Chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusion and recommendations upon all the matters referred to it.

(m) Duties of Actuary. — The Board of Trustees shall designate an actuary who shall be the technical adviser of the Board of Trustees on matters regarding the operation of the funds created by the provisions of this Chapter and shall perform such other duties as are required in connection therewith.

(n) Immediately after the establishment of the Retirement System the actuary shall make such investigation of the mortality, service and compensation experience of the members of the System as he shall recommend and the Board of Trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the Board of Trustees such tables and such rates as are required in subsection (o), paragraphs (1) and (2), of this section. The Board of Trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this Chapter.

(o) In the year 1945, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the Board of Trustees shall:

(1) Adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary; and

(2) Certify the rates of contributions payable by the participating units on account of new entrants at various ages.

(p) On the basis of such tables and interest assumption rate as the Board of Trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this Chapter.

(q) Notwithstanding any law, rule, regulation or policy to the contrary, any board, agency, department, institution or subdivision of the State maintaining lists of names and addresses in the administration of their programs may upon request provide to the Retirement System information limited to social security numbers, current name and addresses of persons identified by the System as members, beneficiaries, and beneficiaries of members of the System. The System shall use such information for the sole purpose of notifying members, beneficiaries, and beneficiaries of members of their rights to and accruals of benefits in the Retirement System. Any social security number, current name and address so obtained and any information concluded therefrom and the source thereof shall be treated as confidential and shall not be divulged by any employee of the Retirement System or of the Department of State Treasurer except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the Retirement System. Any person, officer, employee or former employee violating this provision shall be guilty of a Class 1 misdemeanor; and if such offending person be a public official or employee, he shall be dismissed from office or employment and shall not hold any public office or employment in this State for a period of five years thereafter. (1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7; 1961, c. 515, ss. 3, 4; 1965, c. 781; 1969, c. 442, s. 15; 1973, c. 243, s. 8; 1985, c. 479, s. 196(o); 1987, c. 539, s. 1; 1993, c. 539, s. 944; 1994, Ex. Sess., c. 24, s. 14(c); 2006-64, ss. 1.1, 1.2.)

Editor's Note. — Session Laws 2006-64, s. 2, provides: "This act is effective when it becomes law [July 9, 2006], and the additional members shall be designated by the Governor to serve until April 1, 2008, when their successors shall be designated."

Effect of Amendments. — Session Laws 2006-64, ss. 1.1 and 1.2, effective July 9, 2006, rewrote subsection (c); and, in the last sentence of subsection (f), substituted "A majority of" for "Five" and inserted "in attendance."

Chapter 130A.

Public Health.

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Article 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

§ 130A-4. Administration.

(a) Except as provided in subsection (c) of this section, the Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission. A local health director shall administer the programs of the local health department and enforce the rules of the local board of health.

(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules.

(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission.

(d) When requested by the Secretary of Environment and Natural Resources, a local health department shall enforce the rules of the Commission and the rules adopted by the Environmental Management Commission pursuant to G.S. 87-87 under the supervision of the Department of Environment and Natural Resources. The local health department shall utilize local staff authorized by the Department of Environment and Natural Resources to enforce the specific rules. (1983, c. 891, s. 2; 1995, c. 123, s. 2; 1997-443, s. 11A.56; 2001-474, s. 18; 2006-202, s. 5; 2006-255, s. 13.1.)

Effect of Amendments. — Session Laws 2006-202, s. 5, effective August 7, 2006, inserted "and the rules adopted by the Environmental Management Commission pursuant to G.S. 87-87" in the middle of the first sentence of subsection (d).

Session Laws 2006-255, s. 13.1, effective August 23, 2006, inserted "Part 4 of Article 5 and" near the middle of subsection (c).

§ 130A-5. Duties of the Secretary.

The Secretary shall have the authority:

(1) To enforce the State health laws and the rules of the Commission;

(2) To investigate the causes of epidemics and of infectious, communicable and other diseases affecting the public health in order to control and prevent these diseases; to provide, under the rules of the Commission, for the prevention, detection, reporting and control of communicable, infectious or any other diseases or health hazards considered harmful to the public health; to obtain, notwithstanding the provisions of G.S. 8-53, a copy or a summary of pertinent portions of privileged patient medical records deemed necessary for investigating a disease or

health hazard that may present a clear danger to the public health. Records shall be identified as necessary by joint agreement of a Department physician and the patient's attending physician. However, if the Department is unable to contact the attending physician after reasonable attempts to do so, or if the Department determines that contacting all attending physicians of patients involved in an investigation would be impractical or would unreasonably delay the inquiry and thereby endanger the public health, the records shall be identified as necessary by joint agreement of a Department physician and the health care facility's chief of staff. For a facility with no chief of staff, the facility's chief administrator may consent to the Department's review of the records. Any person, authorized to have or handle such records, providing copies or summaries of privileged patient medical records pursuant to this subdivision shall be immune from civil or criminal liability that might otherwise be incurred or imposed based upon invasion of privacy or breach of physician-patient confidentiality arising out of the furnishing of or agreement to furnish such records;

(3) To develop and carry out reasonable health programs that may be necessary for the protection and promotion of the public health and the control of diseases. The Commission is authorized to adopt rules to carry out these programs;

(4) To make sanitary and health investigations and inspections;

(5) To investigate occupational health hazards and occupational diseases and to make recommendations for the elimination of the hazards and diseases. The Secretary shall work with the Industrial Commission and shall file sufficient reports with the Industrial Commission to enable it to carry out all of the provisions of the Workers' Compensation Act with respect to occupational disease.

(6) To receive donations of money, securities, equipment, supplies, realty or any other property of any kind or description which shall be used by the Department for the purpose of carrying out its public health programs;

(7) To acquire by purchase, devise or otherwise in the name of the Department equipment, supplies and other property, real or personal, necessary to carry out the public health programs;

(8) To use the official seal of the Department. Copies of documents in the possession of the Department may be authenticated with the seal of the Department, attested by the signature or a facsimile of the signature of the Secretary, and when authenticated shall have the same evidentiary value as the originals;

(9) To disseminate information to the general public on all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of these materials shall remain in the Department to be used to replace the materials;

(10) To be the health advisor of the State and to advise State officials in regard to the location, sanitary construction and health management of all State institutions; to direct the attention of the State to health matters which affect the industries, property, health and lives of the people of the State; to inspect at least annually State institutions and facilities; to make a report as to the health conditions of these institutions or facilities with suggestions and recommendations to the appropriate State agencies. It shall be the duty of the persons in immediate charge of these institutions or facilities to furnish all assistance necessary for a thorough inspection;

(11) To establish a schedule of fees based on income to be paid by a recipient for services provided by Migrant Health Clinics and Development Evaluation Centers;

(12) To establish fees for the sale of specimen containers, vaccines and other biologicals. The fees shall not exceed the actual cost of such items, plus transportation costs;

(13) To establish a fee to cover costs of responding to requests by employers for industrial hygiene consultation services and occupational consultation services. The fee shall not exceed two hundred dollars ($200.00) per on site inspection; and

(14) To establish a fee for companion animal certificate of examination forms to be distributed, upon request, by the Department to licensed veterinarians. The fee shall not exceed the cost of the form and shipping costs.

(15) To establish a fee not to exceed the cost of analyzing clinical Pap smear specimens sent to the State Laboratory by local health departments and State-owned facilities and for reporting the results of the analysis. This fee shall be in addition to the charge for the Pap smear test kit.

(16) To charge a fee of up to fifty-five dollars ($55.00) for analyzing private well-water samples sent to the State Laboratory of Public Health by local health departments. The fee shall be imposed only for analyzing samples from newly constructed wells. The fee shall be computed annually by the Director of the State Laboratory of Public Health by analyzing the previous year's testing at the State Laboratory of Public Health, and applying the amount of the total cost of the private well-water testing, minus State appropriations that support this effort. The fee includes the charge for the private well-water panel test kit. (1957, c. 1357, s. 1; 1961, c. 51, s. 4; c. 833, s. 14; 1969, c. 982; 1973, c. 476, ss. 128, 138; 1979, c. 714, s. 2; 1981, c. 562, s. 4; 1983, c. 891, s. 2; 1985, c. 470, s. 1; 1991, c. 227, s. 1; 1993 (Reg. Sess., 1994), c. 715, s. 1; 2003-284, s. 34.13(a); 2006-66, s. 10.20(a).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.20(b), provides: "The Department of Health and Human Services, Division of Public Health, shall use funds available for the 2006-2007 fiscal year to pay for positions for the private well water safety program authorized in the Current Operations and Capital Improvements Appropriations Act of 2006. Funds realized from fees collected during the 2006-2007 fiscal year shall be used to replace available funds authorized under this subsection and allocated for positions authorized for the private well water safety program for the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 10.20(a), effective July 1, 2006, added new subdivision (16).

§ 130A-12. Confidentiality of records.

All records containing privileged patient medical information, information protected under 45 Code of Federal Regulations Parts 160 and 164, and information collected under the authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of Health and Human Services, the Department of Environment and Natural Resources, or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 Code of Federal Regulations § 164.501. (1985, c. 470, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 9; 1995, c. 428, s. 1.1; 2004-80, s. 4; 2006-255, s. 13.2.)

Effect of Amendments. — Session Laws 2006-255, s. 13.2, effective August 23, 2006, in the first sentence, deleted "or" following the first occurrence of "information," substituted "Code of Federal Regulations" for "C.F.R.," inserted "and information collected under the authority of Part 4 of Article 5 of this Chapter," inserted "of Health and Human Services, the Department of Environment and Natural Resources" and made minor punctuation changes; and substituted "Code of Federal Regulations" for "C.F.R." near the end of the last sentence.

Part 2. Remedies.

§ 130A-17. Right of entry.

(a) The Secretary and a local health director shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of this Chapter or the rules adopted by the Commission or a local board of health. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2. However, if an imminent hazard exists, no warrant is required for entry upon the premises.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.60; 2001-474, s. 19; 2006-255, s. 13.3.)

Effect of Amendments. — Session Laws 2006-255, s. 13.3, effective August 23, 2006, inserted "Part 4 of Article 5 and" near the end of subsection (b).

§ 130A-18. Injunction.

(a) If a person shall violate any provision of this Chapter or the rules adopted by the Commission or rules adopted by a local board of health, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.61; 2001-474, s. 20; 2006-255, s. 13.4.)

Effect of Amendments. — Session Laws 2006-255, s. 13.4, effective August 23, 2006, inserted "Part 4 of Article 5 and" near the end of subsection (b).

§ 130A-19. Abatement of public health nuisance.

(a) If the Secretary or a local health director determines that a public health nuisance exists, the Secretary or a local health director may issue an order of abatement directing the owner, lessee, operator or other person in control of the property to take any action necessary to abate the public health nuisance. If the person refuses to comply with the order, the Secretary or the local health director may institute an action in the superior court of the county where the public health nuisance exists to enforce the order. The action shall be calendared for trial within 60 days after service of the complaint upon the defendant. The court may order the owner to abate the nuisance or direct the Secretary or the local health director to abate the nuisance. If the Secretary or the local health director is ordered to abate the nuisance, the Department or the local health department shall have a lien on the property for the costs of the abatement of the nuisance in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A of the General Statutes and the lien may be enforced as provided therein.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1997-443, s. 11A.62; 2006-255, s. 13.5.)

Effect of Amendments. — Session Laws 2006-255, s. 13.5, effective August 23, 2006, inserted "Part 4 of Article 5 and" near the end of subsection (b).

§ 130A-20. Abatement of an imminent hazard.

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the Department or the local health department shall have a lien on the property of the owner, lessee, operator, or other person in control of the property where the imminent hazard existed for the cost of the abatement of the imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter 44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action. The owner, lessee, operator, or any other person against whose property the lien has been filed may defeat the lien by showing that that person was not culpable in the creation of the imminent hazard.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1997-443, s. 11A.63; 2002-179, s. 6; 2006-255, s. 13.6.)

Effect of Amendments. — Session Laws 2006-255, s. 13.6, effective August 23, 2006, inserted "Part 4 of Article 5 and" near the end of subsection (b).

§ 130A-21. Embargo.

(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, the Secretary of Environment and Natural Resources or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when the food or drink is in an establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of Environment and Natural Resources regional environmental health specialists, or their superiors, in programs regulating food and drink pursuant to this Chapter. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to this section, the Department of Environment and Natural Resources or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125 shall be carried out by the Secretary of the Department of Environment and Natural Resources or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of Environment and Natural Resources regional environmental health specialist or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125.

(b) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any milk designated as Grade “A” milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the milk by affixing a tag to it and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission.

The official by whom the milk was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the milk is detained or embargoed for an order for condemnation of the article. If the court finds that the milk is misbranded or that it does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, either the milk shall be destroyed under the supervision of the petitioner or the petitioner shall ensure that the milk will not be used for human consumption as Grade “A” milk. All court costs and fees, storage, expenses of carrying out the court’s order and other expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling or processing, can be properly branded and will satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the court, after the payment of all costs, fees, and expenses and after the claimant posts an adequate bond, may order that the milk be delivered to the claimant for proper labelling and processing under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court either that the milk is no longer mislabelled or in violation of the milk sanitation rules adopted pursuant to G.S. 130A-275, or that the milk will not be used for human consumption, and that in either case the expenses of supervision have been paid.

(c) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any scallops, shellfish or crustacea is adulterated or misbranded, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the article by affixing a tag to it and warning all persons not to remove or dispose of the article until permission for removal or disposal is given by the official by whom it was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article without that permission.

The official by whom the scallops, shellfish or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds that the article is adulterated or misbranded, that article shall be destroyed under the supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid.

(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority.

(e) For the purpose of this section, a food or drink is adulterated if the food or drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed misbranded under G.S. 106-130. (1983, c. 891, s. 2; 1997-261, s. 109; 1997-443, s. 11A.63A; 2006-80, s. 1.)

Effect of Amendments. — Session Laws 2006-80, s. 1, effective December 1, 2006, and applicable to offenses committed on or after that date, rewrote subsection (a).

§ 130A-24. Appeals procedure.

CASE NOTES

Subject Matter Jurisdiction. — Letter to an employee after her termination while on medical leave that expressed sympathy for her medical condition and reiterated facts regarding the employee's termination did not constitute sufficient notice of the decision or action regarding the grievance filed by the employee, which triggered the right to appeal for purposes of G.S. 126-38; because the employer, the Department of Social Services (DSS), failed to provide the notice required under G.S. 150B-23(f) as to appealing her termination, an administrative law judge properly denied the DSS' motion to dismiss the appeal as untimely. Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

ARTICLE 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-39. Powers and duties of a local board of health.

(a) A local board of health shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.

(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Health Services or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Health Services or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading, operating, and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this Chapter and as defined in G.S. 130A-247(1), and a local board of health may adopt rules concerning wastewater collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters only in accordance with G.S. 130A-335(c).

(c) The rules of a local board of health shall apply to all municipalities within the local board's jurisdiction.

(d) Not less than 10 days before the adoption, amendment or repeal of any local board of health rule, the proposed rule shall be made available at the office of each county clerk within the board's jurisdiction, and a notice shall be published in a newspaper having general circulation within the area of the board's jurisdiction. The notice shall contain a statement of the substance of the proposed rule or a description of the subjects and issues involved, the proposed effective date of the rule and a statement that copies of the proposed rule are available at the local health department. A local board of health rule shall become effective upon adoption unless a later effective date is specified in the rule.

(e) Copies of all rules shall be filed with the secretary of the local board of health.

(f) A local board of health may, in its rules, adopt by reference any code, standard, rule or regulation which has been adopted by any agency of this State, another state, any agency of the United States or by a generally recognized association. Copies of any material adopted by reference shall be filed with the rules.

(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", for services performed pursuant to Part 11, Article 8 of this Chapter, "Tattooing", and for services performed pursuant to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7065; 1957, c. 1357, s. 1; 1959, c. 1024, s. 1; 1963, c. 1087; 1973, c. 476, s. 128; c. 508; 1977, c. 857, s. 2; 1981, c. 130, s. 2; c. 281; c. 949, s. 4; 1983, c. 891, s. 2; 1985, c. 175, s. 1; 1989, c. 577, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 10; 1993 (Reg. Sess., 1994), c. 670, s. 2; 1995, c. 507, s. 26.8(c); 2006-202, s. 6.)

Effect of Amendments. — Session Laws 2006-202, s. 6, effective August 7, 2006, added "and for services performed pursuant to G.S. 87-97" and made a minor stylistic change at the end of the second sentence of subsection (g).

Part 2. Sanitary Districts.

§ 130A-55. Corporate Powers.

A sanitary district board shall be a body politic and corporate and may sue and be sued in matters relating to the sanitary district. Notwithstanding any limitation in the petition under G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary district board shall have the following powers:

(1) To acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types, including septic tank systems or other on-site collection, treatment or disposal facilities or systems; water supply systems; water purification or treatment plants and other utilities necessary for the preservation and promotion of the public health and sanitary welfare within the district. The utilities shall be constructed, operated and maintained in accordance with applicable statutes and rules.

(2) To acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems, water supply systems; water purification or treatment plants and other utilities, within and outside the corporate limits of the district, as may be necessary for the preservation of the public health and sanitary welfare outside the corporate limits of the district, within reasonable limitation. The utilities shall be constructed, operated and maintained in accordance with applicable statutes and rules.

    a. The authority granted to a sanitary district by the provisions of this subsection is supplemental to the authority granted to a sanitary district by other provisions of law.

    b. Actions taken by a sanitary district to acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types; water supply systems; water purification or treatment plants and other utilities within and outside the corporate limits to provide service outside the corporate limits are approved and validated.

    c. This subsection shall apply only in counties with a population of 70,000 or greater, as determined by the most recent decennial federal census.

(3) To levy taxes on property within the district in order to carry out the powers and duties conferred and imposed on the district by law, and to pay the principal of and interest on bonds and notes of the district.

(4) To acquire either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.

(5) To employ and compensate engineers, counsel and other persons as may be necessary to carry out projects.

(6) To negotiate and enter into agreements with the owners of existing water supplies, sewage systems or other utilities as may be necessary to carry out the intent of this Part.

(7) To adopt rules necessary for the proper functioning of the district. However, these rules shall not conflict with rules adopted by the Commission for Health Services, Environmental Management Commission, or the local board of health having jurisdiction over the area.

(8) a. To contract with any person within or outside the corporate limits of the district to supply raw water without charge to the person in return for an agreement to allow the district to discharge sewage in the person's previous water supply. The district may so contract and construct at its expense all improvements necessary or convenient for the delivery of the water when, in the opinion of the sanitary district board and the Department, it will be for the best of the district.

b. To contract with any person within or outside the corporate limits of the district to supply raw or filtered water and sewer service to the person where the service is available. For service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall not be liable for damages for failure to furnish a sufficient supply of water and adequate sewer service.

c. To contract with any person within or outside the corporate limits of the district for the treatment of the district's sewage in a sewage disposal or treatment plant owned and constructed or to be constructed by that person.

(9) After adoption of a plan as provided in G.S. 130A-60, the sanitary district board may, in its discretion, alter or modify the plan if the Department determines that the alteration or modification does not constitute a material deviation from the objective of the plan and is in the public health interest of the district. The alteration or modification must be approved by the Department. The sanitary district board may appropriate or reappropriate money of the district for carrying out the altered or modified plan.

(10) To take action, subject to the approval of the Department, for the prevention and eradication of diseases transmissible by vectors by instituting programs for the eradication of the mosquito.

(11) To collect and dispose of garbage, waste and other refuse by contract or otherwise.

(12) To establish a fire department, or to contract for firefighting apparatus and personnel for the protection of life and property within the district.

(13) To provide or contract for rescue service, ambulance service, rescue squad or other emergency medical services for use in the district. The sanitary district shall be subject to G.S. 153A-250.

(14) To have privileges and immunities granted to other governmental units in exercise of the governmental functions.

(15) To use the income of the district, and if necessary, to levy and collect taxes upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, to provide fire protection and rescue services in the district, and to acquire, construct, maintain, operate, and regulate roads and streets within the district. Taxes shall be levied and collected at the same time and in the same manner as taxes for debt service as provided in G.S. 130A-62.

(16) To adopt rules for the promotion and protection of the public health and for these purposes to possess the following powers:

a. To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the district and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the district to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by a district only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the district is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the district has installed water or sewer lines or a combination thereof directly available to the property, the district may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

b. To require any person owning, occupying or controlling improved real property within the district where the water or sewage systems of the district are not immediately available or it is impractical with the systems, to install sanitary toilets, septic tanks and other health equipment or installations in accordance with applicable statutes and rules.

c. To order a person to abate a public health nuisance of the district. If the person being ordered to abate the nuisance refuses to comply with the order, the sanitary district board may institute an action in the superior court of the county where the public health nuisance exists to enforce the order.

d. To abolish or regulate and control the use and occupancy of all pigsties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless the 500 feet is within the corporate limits of a city or town.

e. Upon the noncompliance by a person of a rule adopted by the sanitary district board, the board shall notify the person of the rule being violated and the facts constituting the violation. The person shall have a reasonable time to comply with the rule as determined by the local health director of the person's residence. Upon failure to comply within the specified time or within a time extended by the sanitary district board, the person shall be guilty of a Class 1 misdemeanor.

f. The sanitary district board is authorized to enforce the rules adopted pursuant to this Part by criminal action or civil action, including injunctive relief.

(17) For the purpose of promoting and protecting the public health, safety and the general welfare of the State, a sanitary district board is authorized to establish as zoning units any portions of the sanitary district not under the control of the United States or this State or any agency or instrumentality of either, in accordance with the following:

a. No sanitary district board shall designate an area a zoning area until a petition signed by two-thirds of the qualified voters in the area, as shown by the registration books used in the last general election, and with a petition signed by two-thirds of the owners of real property in the area, as shown by the records in the office of the register of deeds for the county, is filed with the sanitary district board. The petition must be accompanied by a map of the proposed zoning area. The board shall hold a public hearing to obtain comment on the proposed creation of the zoning area. A notice of public hearing must be published in a newspaper of general circulation in the county at least two times, and a copy of the notice shall be posted at the county courthouse and in three other public places in the sanitary district.

b. When a zoning area is established within a sanitary district, the sanitary district board as to the zoning area shall have all rights, privileges, powers and duties granted to municipal corporations under Part 3, Article 19, Chapter 160A of the General Statutes. However, the sanitary district board shall not be required to appoint any zoning commission or board of adjustment. If neither a zoning commission nor board of adjustment is appointed, the sanitary district board shall have all rights.

c. A sanitary district board may enter into an agreement with any city, town or sanitary district for the establishment of a joint zoning commission.

d. A sanitary district board is authorized to use the income of the district and levy and collect taxes upon the taxable property within the district necessary to carry out and enforce the rules and provisions of this subsection.

e. This subsection shall apply only to sanitary districts which adjoin and are contiguous to an incorporated city or town and are located within three miles or less of the boundaries of two other cities or towns.

(18) To negotiate for and acquire by contract any distribution system located outside the district when the water for the distribution system is furnished by the district. If the distribution system is acquired by a district, the district may continue the operation of the system even though it remains outside the district.

(19) To accept gifts of real and personal property for the purpose of operating a nonprofit cemetery; to own, operate and maintain cemeteries with the donated property; and to establish perpetual care funds for the cemeteries in the manner provided by G.S. 160A-347.

(20) To dispose of real or personal property belonging to the district according to the procedures prescribed in Article 12 of Chapter 160A of the General Statutes. For purposes of this subsection, references in Article 12 of Chapter 160A to the "city," the "council," or a specific city official refer, respectively, to the sanitary district, the sanitary district board, and the sanitary district official who most nearly performs the same duties performed by the specified city official. For purposes of this subsection, references in G.S. 160A-266(c) to "one or more city officials" are deemed to refer to one or more sanitary district officials designated by the sanitary district board.

(21) To acquire, renovate property for or construct a medical clinic to serve the district, and to maintain real and personal property for a medical clinic to serve the district.

(22) To make special assessments against benefitted property within the corporate limits of the sanitary district and within the area served or to be served by the sanitary district for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Article 9 of Chapter 153A of the General Statutes, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by sanitary districts. For the purposes of this paragraph, references in Article 9 of Chapter 153A of the General Statutes, to the "county," the

"board of county commissioners," "the board" or a specific county official or employee are deemed to refer respectively to the sanitary district and to the official or employee of the sanitary district who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the officer designated by the sanitary district to perform the functions described in said sections of the statute. This subdivision applies only to sanitary districts with a population of 15,000 or over.

(23) To acquire (by purchase, lease, gift, or otherwise, but not by condemnation), construct, maintain, operate, and regulate roads and streets within the sanitary district which are not State-maintained. Not all of these powers need be exercised.

(24) Expired.

(25) To negotiate and enter into agreements with other municipal corporations or sanitary districts for the purpose of developing and implementing an economic development plan. The agreement may provide for the establishment of a special fund, in which monies not expended at the end of a fiscal year shall remain in the fund. The lead agency designated under the agreement shall be responsible for examination of the fund and compliance with sound accounting principles, including the annual independent audit under G.S. 159-34. The audit responsibilities of the other municipal corporations and sanitary districts extend only to the verification of the contribution to the fund created under the agreement. The procedural requirements of G.S. 158-7.1(c) shall apply to actions of a sanitary district under this subdivision as if it were a city. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; cc. 1130, 1145; 1951, c. 17, s. 1; c. 1035, s. 1; 1957, c. 1357, s. 1; 1961, cc. 669, 865, 1155; 1963, c. 1232; 1965, c. 496, s. 1; 1967, c. 632; c. 637, s. 1; c. 798, s. 2; 1969, cc. 478, 700, 944; 1971, c. 780, s. 29; 1973, c. 476, s. 128; 1979, c. 520, s. 2; c. 619, s. 7; 1981, cc. 629, 655; c. 820, ss. 1-3; c. 898, ss. 1-4; 1981 (Reg. Sess., 1982), c. 1237; 1983, c. 891, s. 2; c. 925, s. 2; 1993, c. 539, s. 948; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 422, ss. 1-4; 2001-221, s. 1; 2006-214, s. 1.)

Effect of Amendments. — Session Laws 2006-214, s. 1, effective September 1, 2006, rewrote subdivision (16)a to require owners of certain property to connect to water and sewer systems.

ARTICLE 6.

Communicable Diseases.

Part 1. In General.

§ 130A-148. Laboratory tests for AIDS virus infection.

CASE NOTES

Cited in Badgett v. Fed. Express Corp., 378 F. Supp. 2d 613, 2005 U.S. Dist. LEXIS 19307 (M.D.N.C. Apr. 7, 2005).

ARTICLE 9.

Solid Waste Management.

Part 2. Solid and Hazardous Waste Management.

§ 130A-291. Division of Waste Management.

Moratorium on New Landfills from August 1, 2006, through August 1, 2007. — The preamble to Session Laws 2006-244, provides: "Whereas, North Carolina has experienced severe problems from widespread flooding during the past five years; and

"Whereas, large areas of the State have also experienced severe drought conditions during the past five years; and

"Whereas, groundwater is the source of drinking water for approximately half the population of the State; and

"Whereas, depletion of certain large groundwater aquifers in the State has been documented in recent years; and

"Whereas, protection and enhancement of water quality in the State's rivers and coastal estuaries is the declared public policy of the State; and

"Whereas, North Carolina is home to many rare and endangered species of plants and animals; and

"Whereas, the State has established many parks, natural areas, and wildlife refuges to protect habitats for migrating birds and other species; and

"Whereas, many fragile ecosystems exist in the State which are in need of further study and protection; and

"Whereas, the State recognizes that ecosystems transcend state borders, and that changes affecting the State's water, air, natural habitats, and scenic resources also have impacts outside the State; and

"Whereas, it is the policy of the State to ensure the continued public enjoyment of the natural attractions of the State; and

"Whereas, improperly sited, designed, or operated landfills have the potential to cause serious environmental damage, including groundwater contamination; and

"Whereas, it is essential that the State study the siting, design, and operational requirements for landfills for the disposal of solid waste in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas in order to protect public health and the environment; and

"Whereas, it is critical to the protection of public health and the environment to adequately staff the State solid waste program to review permit applications, ensure compliance with State solid waste management laws and rules, and provide technical assistance on solid waste management issues; and

"Whereas, economic and other factors may cause landfills to be concentrated in minority and low-income communities in the State; and

"Whereas, minority and low-income communities may be at particularly high risk for potential threats to human health and the environment from the siting of landfills in these areas; and

"Whereas, it is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills;"

Session Laws 2006-244, s. 1 provides: "Definitions. — The definitions set forth in G.S. 130A-290 apply throughout this act."

Session Laws 2006-244, s. 2, provides: "Moratorium Established. — There is hereby established a moratorium on consideration of applications for a permit and on the issuance of permits for new landfills in the State. The purposes of this moratorium are to allow the State to study solid waste disposal issues in order to protect public health and the environment. The Department of Environment and Natural Resources shall not consider a permit application nor issue a permit for a new landfill for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste for a period beginning on 1 August 2006 and ending on 1 August 2007."

Session Laws 2006-244, s. 3, provides: "Exceptions. — The moratorium established by Section 2 of this act shall not prohibit consideration of an application for or issuance of:

"(1) An amendment, modification, or other change to a permit for a landfill issued on or before 1 June 2006.

"(2) A permit for a horizontal or vertical expansion of the landfill permitted on or before 1 June 2006.

"(3) A permit to construct a new landfill within the facility boundary identified in the facility plan of a landfill permitted on or before 1 June 2006.

"(4) A permit to operate a new landfill if a permit to construct the new landfill was issued on or before 1 June 2006.

"(5) A permit for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.

"(6) A permit for a sanitary landfill determined to be necessary by the Secretary of Environment and Natural Resources in order to respond to an imminent hazard to public health or a natural disaster."

Session Laws 2006-244, s. 4(a), provides: "Study. — The Environmental Review Commission, with the assistance of the Division of Waste Management of the Department of Environment and Natural Resources, shall study issues related to solid waste. The Commission shall specifically study measures concerning:

"(1) Financial responsibility requirements for solid waste landfills, including the application of requirements to limited liability companies and other business entity structures of applicants seeking solid waste landfill permits.

"(2) Application of franchise requirements and local government approval for solid waste landfill permits, including adequacy of public notice and comment, community studies, and site designations prior to local government approval.

"(3) Siting, design, and operational requirements for landfills for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste that are proposed in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas.

"(4) Formation of dangerous chemicals and gases in flood-prone landfill environments.

"(5) Traffic considerations for proposed landfills.

"(6) Regulatory oversight and staffing for permitting and compliance of solid waste landfills, and inspection of waste containers on barges, railways, and trucks.

"(7) Compliance with statutory prohibitions on disposal of certain types of solid waste and measures to prevent disposal of hazardous waste in solid waste and construction and demolition landfills.

"(8) Ways to reduce the amount of solid waste disposed of within North Carolina landfills, including statewide tipping fees, bans on the disposal of certain types of waste in landfills, more aggressive recycling requirements, and enhanced regulatory requirements for landfills and other solid waste management facilities."

Session Laws 2006-244, s. 4(b), provides: "Subcommittee. — In order to facilitate the conduct of this study, the Cochairs of the Environmental Review Commission may establish a subcommittee of the Commission. The subcommittee of the Commission may include nonlegislative members who have special knowledge, interest, or expertise in various aspects of solid waste management, appointed in consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

Session Laws 2006-244, s. 4(c), provides: "Report. — The Commission shall report its findings, together with any recommended legislation, to the 2007 Regular Session of the General Assembly upon its convening."

Session Laws 2006-244, s. 5(a), provides: "Committee Established. — The Joint Select Committee on Environmental Justice is hereby established."

Session Laws 2006-244, s. 5(b) provides: "Membership. — The Committee shall consist of 12 members as follows:

"(1) Four members appointed by the President Pro Tempore of the Senate.

"(2) Four members appointed by the Speaker of the House of Representatives.

"(3) The Director of the Division of Waste Management of the Department of Environment and Natural Resources, or the Director's designee.

"(4) The President of the North Carolina Conference of the NAACP, or the President's designee.

"(5) The Executive Director of the North Carolina Association of County Commissioners, or the Director's designee.

"(6) The Executive Director of the North Carolina League of Municipalities, or the Director's designee."

Session Laws 2006-244, s. 5(c) provides: "Cochairs. — The Committee shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Committee shall meet upon the call of the cochairs."

Session Laws 2006-244, s. 5(d) provides: "Quorum. — A quorum of the Committee shall consist of seven members."

Session Laws 2006-244, s. 5(e) provides: "Vacancies. — Any vacancy on the Committee shall be filled by the original appointing authority."

Session Laws 2006-244, s. 5(f) provides: "Purpose and Duties. — The Committee shall study:

"(1) The location of landfills in the State, with historical and current demographic information, including health statistics of the surrounding population of each site where available. The Committee shall identify landfills located in proximity to minority and low-income communities.

"(2) The impacts that landfills located in proximity to minority and low-income communities have on these communities with regard to human health, the environment, and economic development.

"(3) Factors, including economic factors, that may have caused landfills to be concentrated in minority and low-income communities in the State.

"(4) Past enforcement actions taken by the U.S. Environmental Protection Agency or the Department of Environment and Natural Resources for violations affecting human health or the environment at any landfill in the State in order to assess whether enforcement practices for violations at these sites have resulted in uneven enforcement outcomes, and to determine if alternative or stronger enforcement measures could be taken, or in the alternative if other methods could be used to allocate resources, in order to more equitably serve minority and low-income communities.

"(5) Statutes, rules, and policies used by State, regional, and local governments, and a review of the role played by these entities to influence or make siting and land-use decisions concerning landfills in the State.

"(6) Data and methodologies by which State, regional, and local governments might become more specifically aware of situations in which neighborhoods are at particularly high risk for potential threats to human health and the environment from the siting of landfills.

"(7) Approaches to ensure consideration of environmental justice and equity issues when formulating and implementing policies, procedures, and legislation within governmental agencies and other institutions."

Session Laws 2006-244, s. 5(g), provides: "Expenses of Members. — Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1."

Session Laws 2006-244, s. 5(h), provides: "Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Committee to aid in its work."

Session Laws 2006-244, s. 5(i), provides: "Consultants. — The Committee may hire consultants to assist with the study as provided in G.S. 120-32.02(b)."

Session Laws 2006-244, s. 5(j), provides: "Meetings. — The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Committee."

Session Laws 2006-244, s. 5(k), provides: "Report. — The Committee shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Committee shall terminate."

Session Laws 2006-244, s. 5(*l*), provides: "Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act."

§ 130A-291.1. Septage management program; permit fees.

(a) The Department shall establish and administer a septage management program in accordance with the provisions of this section.

(b) For the protection of the public health, the Commission shall adopt rules governing the management of septage. The rules shall include, but are not limited to, criteria for the sanitary management of septage, including standards for the transportation, storage, treatment, and disposal of septage; operator registration and training; the issuance, suspension, and revocation of permits; and procedures for the payment of annual fees.

(c) No septage management firm shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued only when the septage management firm satisfies all of the requirements of the rules adopted by the Commission. A septage management firm that commences operation without first having obtained a permit shall cease to operate until the firm obtains a permit under this section and shall pay an initial annual fee equal to twice the amount of the annual fee that would otherwise be applicable under subsection (e) of this section.

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under this section. A permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

(e) A septage management firm that operates one pumper truck shall pay an annual fee of five hundred fifty dollars ($550.00) to the Department. A septage management firm that operates two or more pumper trucks shall pay an annual fee of eight hundred dollars ($800.00) to the Department.

(e1) An individual who operates a septage treatment or disposal facility but who does not engage in the business of pumping, transporting, or disposing of septage shall pay an annual fee of two hundred dollars ($200.00).

(e2) A properly completed application for a permit and the annual fee under this section are due by 1 January of each year. The Department shall mail a notice of the annual fees to each permitted septage management firm and each individual who operates a septage treatment or disposal facility prior to 1 November of each calendar year. A late fee in the amount equal to fifty percent (50%) of the annual permit fee under this section shall be submitted when a properly completed application and annual permit fee are not submitted by 1 January following the 1 November notice. The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e3) The Septage Management Account is established as a nonreverting account within the Department. Fees collected under this section shall be placed in the Septage Management Account and shall be applied only to the costs of the septage management program.

(e4) Permits for new septage management firm operators and permits for septage management firm operators that have not operated a septage management firm in the 24 months immediately preceding the submittal of an application shall be considered probationary for 12 months. The Department may revoke any probationary permit of a firm or an individual that violates any provision of this section, G.S. 130A-291.2, G.S. 130A-291.3, or any rule adopted under these sections. If the Department revokes a probationary permit issued to a firm or individual, the Department shall not issue another permit to that firm or individual, and the firm or individual may not engage in any septage management activity for a period of 12 months.

(e5) The Department shall provide technical and regulatory assistance to permit applicants and permit holders. Assistance may include, but is not limited to, taking soil samples on proposed and permitted septage land application sites and providing required training to permit applicants and permit holders.

(f) All wastewater systems designed to discharge effluent to the surface waters may accept, treat, and dispose septage from permitted septage management firms, unless acceptance of the septage would constitute a violation of the permit conditions of the wastewater system. The wastewater system may charge a reasonable fee for acceptance, treatment, and disposal of septage based on a fee schedule that takes into account septage composition and quantity and that is consistent with other charges for use of that system.

(g) Production of a crop in accordance with an approved nutrient management plan on land that is permitted as a septage land application site is a bona fide farm purpose under G.S. 153A-340.

(h) The Department shall inspect each septage land application site at least twice a year and shall inspect the records associated with each septage land application site at least annually. The Department shall inspect each pump truck used for septage management at least once every two years.

(i) The Department shall approve innovative or alternative septage treatment or storage methods that are demonstrated to protect the public health and the environment.

(j) Septage generated by the operation of a wastewater system permitted under Article 11 of this Chapter may be managed as provided in this section and may be land applied at a septage land application site permitted under this section. (1987 (Reg. Sess., 1988), c. 1058, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 8; 1993, c. 173, s. 4; 2001-505, s. 1.1; 2005-276, s. 6.37(t); 2006-255, s. 5.1(a).)

Editor's Note. —

Session Laws 2006-255, s. 5.1(b), provides: "Management, including land application, of septage generated by the operation of a wastewater system permitted under Article 11 of Chapter 130A of the General Statutes shall be governed by 40 Code of Federal Regulations Part 503 (July 1, 2003, Edition) and rules adopted by the Commission for Health Services pursuant to G.S. 130A-291.1, as amended by subsection (a) of this section."

Effect of Amendments. —

Session Laws 2006-255, s. 5.1(a), effective August 23, 2006, added subsection (j).

§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;

(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;

(3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

(4)a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. The issuance of permits for sanitary landfills operated by local governments is exempt from the environmental impact statements required by Article 1 of Chapter 113A of the General Statutes, entitled the North Carolina Environmental Policy Act of 1971. All sanitary landfill permits issued to local governments prior to July 1, 1984, are hereby validated notwithstanding any failure to provide environmental impact statements pursuant to the North Carolina Environmental Policy Act of 1971;

(4a) No permit shall be granted for any public or private sanitary landfill to receive solid non-radioactive waste generated outside the boundaries of North Carolina to be deposited, unless such waste has previously been inspected by the solid waste regulatory agency of that nation, state or territory, characterized in detail as to its contents and certified by that agency to be non-injurious to health and safety. The Commission shall adopt rules to implement this subsection.

(5) Repealed by Session Laws 1983, c. 795, s. 3.

(5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such designation be made and after receipt by the Department of a solid waste management plan which shall include:

a. The existing and projected population for such area;
b. The quantities of solid waste generated and estimated to be generated in such area;
c. The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;
d. The method of solid waste disposal to be utilized and the energy or material which shall be recovered from the waste; and
e. Such other data that the Department may reasonably require.

(5b) Authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

(5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

(5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department.

(6) The Department is authorized to charge and collect fees from operators of hazardous waste disposal facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

(7) Establish and collect annual fees from generators and transporters of hazardous waste, and from storage, treatment, and disposal facilities regulated under this Article as provided in G.S. 130A-294.1.

(b) The Commission shall adopt and the Department shall enforce rules to implement a comprehensive statewide solid waste management program. The rules shall be consistent with applicable State and federal law; and shall be designed to protect the public health, safety, and welfare; preserve the environment; and provide for the greatest possible conservation of cultural and natural resources. Rules for the establishment, location, operation, maintenance, use, discontinuance, recordation, post-closure care of solid waste management facilities also shall be based upon recognized public health practices and procedures, including applicable epidemiological research and studies; hydrogeological research and studies; sanitary engineering research and studies; and current technological development in equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

The Commission shall adopt rules for financial responsibility to ensure the availability of sufficient funds for closure and post-closure maintenance and monitoring at solid waste management facilities, and for any corrective action the Department may require during the active life of a facility or during the closure and post-closure periods. The rules may permit demonstration of financial responsibility through the use of a letter of credit, insurance, surety, trust agreement, financial test, or guarantee by corporate parents or third parties who can pass the financial test. The rules shall require that an owner or operator of a privately owned solid waste management facility demonstrate financial responsibility by a method or combinations of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective action that the Department may require will be available during the active life of the facility, at closure, and for a period of not less than 30 years after closure even if the owner or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b1)(1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a "substantial amendment" means either:

a. An increase of ten percent (10%) or more in:

1. The population of the geographic area to be served by the sanitary landfill;
2. The quantity of solid waste to be disposed of in the sanitary landfill; or
3. The geographic area to be served by the sanitary landfill.

b. A change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.

(2) A person who intends to apply for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill

shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government may adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a sanitary landfill shall include all of the following:

a. A statement of the population to be served, including a description of the geographic area.
b. A description of the volume and characteristics of the waste stream.
c. A projection of the useful life of the sanitary landfill.
d. An explanation of how the franchise will be consistent with the jurisdiction's solid waste management plan required under G.S. 130A-309.09A, including provisions for waste reduction, reuse, and recycling.
e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.
f. A facility plan for the sanitary landfill that shall include the exact boundaries of the proposed facility, proposed development of the facility site in five-year operational phases, the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility.

(2a) A local government may elect to award a preliminary franchise. If a local government elects to award a preliminary franchise, the preliminary franchise shall contain, at a minimum, all of the information described in sub-subdivisions a. through e. of subdivision (2) of this subsection plus a general description of the proposed sanitary landfill, including the approximate number of acres required for the proposed sanitary landfill and its appurtenances and a description of any other solid waste management activities that are to be conducted at the site.

(3) Prior to the award of a franchise for the construction or operation of a sanitary landfill, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide at least 30 days' notice to the public of the public hearing. The notice shall include a summary of all the information required to be included in the franchise, and shall specify the procedure to be followed at the public hearing. The applicant for the franchise shall provide a copy of the application for the franchise that includes all of the information required to be included in the franchise, to the public library closest to the proposed sanitary landfill site to be made available for inspection and copying by the public.

(4) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall

request each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the renewed or substantially amended permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(5) As used in this subdivision, "coal-fired generating unit" and "investor-owned public utility" have the same meaning as in G.S. 143-

215.107D(a). Notwithstanding subdivisions (a)(4), (b1)(3), or (b1)(4) of this section, no franchise shall be required for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.

(b2) The Department may require an applicant for a permit under this Article to satisfy the Department that the applicant, and any parent, subsidiary, or other affiliate of the applicant or parent:

(1) Is financially qualified to carry out the activity for which the permit is required.

(2) Has substantially complied with the requirements applicable to any solid waste management activity in which the applicant has previously engaged and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

(b3) An applicant for a permit under this Article shall satisfy the Department that the applicant has met the requirements of subsection (b2) of this section before the Department is required to otherwise review the application. In order to continue to hold a permit under this Article, a permittee must remain financially qualified and must provide any information requested by the Department to demonstrate that the permittee continues to be financially qualified.

(c) The Commission shall adopt and the Department shall enforce rules concerning the management of hazardous waste. These rules shall establish a complete and integrated regulatory scheme in the area of hazardous waste management and shall provide for:

(1) Establishing criteria for hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous waste;

(1a) Establishing criteria for hazardous constituents, identifying the characteristics of hazardous constituents and listing particular hazardous constituents;

(2) Record-keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities;

(3) Proper labeling of hazardous waste containers;

(4) Use of appropriate containers for hazardous waste;

(5) A manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued;

(6) Proper transportation of hazardous waste;

(7) Treatment, storage and disposal standards of performance and techniques to be used by hazardous waste facilities;

(8) Location, design, ownership and construction of hazardous waste facilities; provided, however, that no hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility;

(9) Plans to minimize unanticipated damage from treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State;

(10) Proper maintenance and operation of hazardous waste facilities, including requirements for ownership by any person or the State, financial responsibility (including requirements for sufficient availability of funds for facility closure and post-closure monitoring and

corrective measures through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee), training of personnel, continuity of operation and procedures for establishing and maintaining hazardous waste facilities;

(11) Monitoring by owners or operators of hazardous waste facilities;

(12) Inspection or copying of records required to be kept;

(13) Obtaining and analyzing hazardous waste samples and samples of hazardous waste containers and labels from generators and transporters and from owners and operators of hazardous waste facilities;

(14) A permit system governing the establishment and operation of hazardous waste facilities;

(15) Additional requirements as necessary for the effective management of hazardous waste;

(16) The operator of the hazardous waste disposal facility shall maintain adequate insurance to cover foreseeable claims arising from the operation of the facility. The Department shall determine what constitutes an adequate amount of insurance;

(17) The bottom of a hazardous waste disposal facility shall be at least 10 feet above the seasonal high water table and more when necessary to protect the public health and the environment; and

(18) The operator of a hazardous waste disposal facility shall make monthly reports to the board of county commissioners of the county in which the facility is located on the kinds and amounts of hazardous wastes in the facility.

(d) The Commission is authorized to adopt and the Department is authorized to enforce rules where appropriate for public participation in the consideration, development, revision, implementation and enforcement of any permit rule, guideline, information or program under this Article.

(e) Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(f) Within 10 days of receiving an application for a permit or for an amendment to an existing permit for a hazardous waste facility, the Department shall notify the clerk of the board of commissioners of the county or counties in which the facility is proposed to be located or is located and, if the facility is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed, and shall file a copy of the application with the clerk. Prior to the issuance of a permit or an amendment of an existing permit the Secretary or his designee shall conduct a public hearing in the county, or in one of the counties in which the hazardous waste facility is proposed to be located or is located. The Secretary or his designee shall give notice of the hearing, and the public hearing shall be in accordance with applicable federal regulations adopted pursuant to RCRA and with Chapter 150B of the General Statutes. Where the provisions of the federal regulations and Chapter 150B of the General Statutes are inconsistent, the federal regulations shall apply.

(g) The Commission shall develop and adopt standards for permitting of hazardous waste facilities. Such standards shall be developed with, and provide for, public participation; shall be incorporated into rules; shall be consistent with all applicable federal and State law, including statutes, regulations and rules; shall be developed and revised in light of the best available scientific data; and shall be based on consideration of at least the following factors:

(1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines, and climate;

(2) Environmental and public health factors, including air quality, quality of surface and groundwater, and proximity to public water supply watersheds;
(3) Natural and cultural resources, including wetlands, gamelands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves, and historic sites;
(4) Local land uses;
(5) Transportation factors, including proximity to waste generators, route safety, and method of transportation;
(6) Aesthetic factors, including the visibility, appearance, and noise level of the facility;
(7) Availability and reliability of public utilities; and
(8) Availability of emergency response personnel and equipment.

(h) Rules adopted by the Commission shall be subject to the following requirements:

(1) Repealed by Session Laws 1989, c. 168, s. 20.
(2) Hazardous waste shall be treated prior to disposal in North Carolina. The Commission shall determine the extent of waste treatment required before hazardous waste can be disposed of in a hazardous waste disposal facility.
(3) Any hazardous waste disposal facility hereafter constructed in this State shall meet, at the minimum, the standards of construction imposed by federal regulations adopted under the RCRA at the time the permit is issued.
(4) No hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility.
(5) Repealed by Session Laws 2001-474, s. 23, effective November 29, 2001.
(6) The following shall not be disposed of in a hazardous waste disposal facility: ignitables as defined in the RCRA, polyhalogenated biphenyls of 50 ppm or greater concentration, and free liquids whether or not containerized.
(7) Facilities for disposal or long-term storage of hazardous waste shall have at a minimum the following: a leachate collection and removal system above an artificial impervious liner of at least 30 mils in thickness, a minimum of five feet of clay or clay-like liner with a maximum permeability of 1.0×10^{-7} centimeters per second (cm/sec) below said artificial liner, and a leachate detection system immediately below the clay or clay-like liner.
(8) Hazardous waste shall not be stored at a hazardous waste treatment facility for over 90 days prior to treatment or disposal.
(9) The Commission shall consider any hazardous waste treatment process proposed to it, if the process lessens treatment cost or improves treatment over then current methods or standards required by the Commission.
(10) Prevention, reduction, recycling, and detoxification of hazardous wastes should be encouraged and promoted. Hazardous waste disposal facilities and polychlorinated biphenyl disposal facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation.

(i) The Department shall develop a comprehensive hazardous waste management plan for the State and shall revise the plan on or before 1 July of even-numbered years. The Department shall report to the Environmental

Review Commission on or before 1 October of each year on the implementation of the comprehensive hazardous waste management plan. The report shall include an evaluation of how well the State and private parties are managing and cleaning up hazardous waste. The report shall also include recommendations to the Governor, State agencies, and the General Assembly on ways to: improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste which must be disposed of.

(j) The Commission may adopt rules for financial responsibility (including requirements for sufficient availability of funds for facility closure and postclosure monitoring and corrective measures, and for potential liability for sudden and nonsudden accidental occurrences), which may permit the use of insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would have been provided by insurance if insurance were the only mechanism used. Any direct or indirect parent corporation or other parent entity of the operator of a commercial hazardous waste treatment facility shall be deemed to be a guarantor of payment by the operator for closure, monitoring, and corrective measures and for liability incurred by the operator arising from the operation of the commercial hazardous waste treatment facility. The Department may provide a copy of any filing to meet the financial responsibility requirements to the State Treasurer, who shall review the filing and provide written comments on the equivalency of protection provided by the filing, including recommended changes.

(k) Each person who generates hazardous waste who is required to pay a fee under G.S. 130A-294.1, and each operator of a hazardous waste treatment facility which treats waste generated on-site who is required to pay a fee under G.S. 130A-294.1, shall submit to the Department at the time such fees are due, a written description of any program to minimize or reduce the volume and quantity or toxicity of such waste.

(*l*) Disposal of solid waste in or upon water in a manner that results in solid waste entering waters or lands of the State is unlawful. Nothing herein shall be interpreted to affect disposal of solid waste in a permitted landfill.

(m) Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility. Such demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.

(n) The Department shall encourage research and development and disseminate information on state-of-the-art means of handling and disposing of hazardous waste. The Department may establish a waste information exchange for the State.

(o) The Department shall promote public education and public involvement in the decision-making process for the siting and permitting of proposed hazardous waste facilities. The Department shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Department shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.

(p) The Department shall each year recommend to the Governor a recipient for a "Governor's Award of Excellence" which the Governor shall award for outstanding achievement by an industry or company in the area of waste management.

(q) The Secretary shall, at the request of the Governor and under the Governor's direction, assist with the negotiation of interstate agreements for the management of hazardous waste.

(r) The Commission shall, in accordance with the procedures set forth in G.S. 160A-211.1 and G.S. 153A-152.1, review upon appeal specific privilege license tax rates that localities may apply to waste management facilities in their jurisdiction.

(s) The Department is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a hazardous waste facility or hazardous waste disposal facility. The Department shall give 30 days notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to land or structures caused by these activities. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 4; c. 764, s. 1; 1977, c. 123; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 2; c. 694, s. 2; 1981, c. 704, s. 6; 1983, c. 795, ss. 3, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 6, 7; c. 1034, s. 73; 1985, c. 582; c. 738, ss. 2, 3; 1985 (Reg. Sess., 1986), c. 1027, s. 31; 1987, c. 597; c. 761; c. 773, s. 1; c. 827, ss. 1, 250; c. 848; 1987 (Reg. Sess., 1988), c. 1111, s. 6; 1989, c. 168, ss. 15-22; c. 317; c. 727, s. 218(86); c. 742, s. 6; 1991, c. 537, s. 1; 1993, c. 86, s. 1; c. 273, s. 1; c. 365, s. 1; c. 473, ss. 1, 2; c. 501, s. 14; 1993 (Reg. Sess., 1994), c. 580, s. 1; c. 722, ss. 1, 2; 1995, c. 502, s. 1; c. 509, s. 70; 1995 (Reg. Sess., 1996), c. 594, ss. 6, 7; 1997-27, s. 2; 2001-357, s. 2; 2001-474, ss. 22, 23, 24, 25; 2002-148, s. 4; 2003-37, s. 1; 2006-256, ss. 1, 2, 3.)

Moratorium on New Landfills From August 1, 2006, through August 1, 2007. — The preamble to Session Laws 2006-244, provides: "Whereas, North Carolina has experienced severe problems from widespread flooding during the past five years; and

"Whereas, large areas of the State have also experienced severe drought conditions during the past five years; and

"Whereas, groundwater is the source of drinking water for approximately half the population of the State; and

"Whereas, depletion of certain large groundwater aquifers in the State has been documented in recent years; and

"Whereas, protection and enhancement of water quality in the State's rivers and coastal estuaries is the declared public policy of the State; and

"Whereas, North Carolina is home to many rare and endangered species of plants and animals; and

"Whereas, the State has established many parks, natural areas, and wildlife refuges to protect habitats for migrating birds and other species; and

"Whereas, many fragile ecosystems exist in the State which are in need of further study and protection; and

"Whereas, the State recognizes that ecosystems transcend state borders, and that changes affecting the State's water, air, natural habitats, and scenic resources also have impacts outside the State; and

"Whereas, it is the policy of the State to ensure the continued public enjoyment of the natural attractions of the State; and

"Whereas, improperly sited, designed, or operated landfills have the potential to cause serious environmental damage, including groundwater contamination; and

"Whereas, it is essential that the State study the siting, design, and operational requirements for landfills for the disposal of solid waste in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas in order to protect public health and the environment; and

"Whereas, it is critical to the protection of public health and the environment to adequately staff the State solid waste program to review permit applications, ensure compliance with State solid waste management laws and rules, and provide technical assistance on solid waste management issues; and

"Whereas, economic and other factors may cause landfills to be concentrated in minority and low-income communities in the State; and

"Whereas, minority and low-income communities may be at particularly high risk for potential threats to human health and the environment from the siting of landfills in these areas; and

"Whereas, it is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills;"

Session Laws 2006-244, s. 1, provides: "Definitions. — The definitions set forth in G.S. 130A-290 apply throughout this act."

Session Laws 2006-244, s. 2, provides: "Moratorium Established. — There is hereby established a moratorium on consideration of applications for a permit and on the issuance of permits for new landfills in the State. The purposes of this moratorium are to allow the State to study solid waste disposal issues in order to protect public health and the environment. The Department of Environment and Natural Resources shall not consider a permit application nor issue a permit for a new landfill for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste for a period beginning on 1 August 2006 and ending on 1 August 2007."

Session Laws 2006-244, s. 3, provides: "Exceptions. — The moratorium established by Section 2 of this act shall not prohibit consideration of an application for or issuance of:

"(1) An amendment, modification, or other change to a permit for a landfill issued on or before 1 June 2006.

"(2) A permit for a horizontal or vertical expansion of the landfill permitted on or before 1 June 2006.

"(3) A permit to construct a new landfill within the facility boundary identified in the facility plan of a landfill permitted on or before 1 June 2006.

"(4) A permit to operate a new landfill if a permit to construct the new landfill was issued on or before 1 June 2006.

"(5) A permit for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.

"(6) A permit for a sanitary landfill determined to be necessary by the Secretary of Environment and Natural Resources in order to respond to an imminent hazard to public health or a natural disaster."

Session Laws 2006-244, s. 4(a), provides: "Study. — The Environmental Review Commission, with the assistance of the Division of Waste Management of the Department of Environment and Natural Resources, shall study issues related to solid waste. The Commission shall specifically study measures concerning:

"(1) Financial responsibility requirements for solid waste landfills, including the application of requirements to limited liability companies and other business entity structures of applicants seeking solid waste landfill permits.

"(2) Application of franchise requirements and local government approval for solid waste landfill permits, including adequacy of public notice and comment, community studies, and site designations prior to local government approval.

"(3) Siting, design, and operational requirements for landfills for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste that are proposed in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas.

"(4) Formation of dangerous chemicals and gases in flood-prone landfill environments.

"(5) Traffic considerations for proposed landfills.

"(6) Regulatory oversight and staffing for permitting and compliance of solid waste landfills, and inspection of waste containers on barges, railways, and trucks.

"(7) Compliance with statutory prohibitions on disposal of certain types of solid waste and measures to prevent disposal of hazardous waste in solid waste and construction and demolition landfills.

"(8) Ways to reduce the amount of solid waste disposed of within North Carolina landfills, including statewide tipping fees, bans on the disposal of certain types of waste in landfills, more aggressive recycling requirements, and enhanced regulatory requirements for landfills and other solid waste management facilities."

Session Laws 2006-244, s. 4(b), provides: "Subcommittee. — In order to facilitate the conduct of this study, the Cochairs of the Environmental Review Commission may establish a subcommittee of the Commission. The subcommittee of the Commission may include nonlegislative members who have special knowledge, interest, or expertise in various aspects of solid waste management, appointed in consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

Session Laws 2006-244, s. 4(c), provides: "Report. — The Commission shall report its findings, together with any recommended legislation, to the 2007 Regular Session of the General Assembly upon its convening."

Session Laws 2006-244, s. 5(a), provides: "Committee Established. — The Joint Select Committee on Environmental Justice is hereby established."

Session Laws 2006-244, s. 5(b), provides: "Membership. — The Committee shall consist of 12 members as follows:

"(1) Four members appointed by the President Pro Tempore of the Senate.

"(2) Four members appointed by the Speaker of the House of Representatives.

"(3) The Director of the Division of Waste Management of the Department of Environment and Natural Resources, or the Director's designee.

"(4) The President of the North Carolina Conference of the NAACP, or the President's designee.

"(5) The Executive Director of the North Carolina Association of County Commissioners, or the Director's designee.

"(6) The Executive Director of the North Carolina League of Municipalities, or the Director's designee."

Session Laws 2006-244, s. 5(c), provides: "Cochairs. — The Committee shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among the irrespective appointees. The Committee shall meet upon the call of the cochairs."

Session Laws 2006-244, s. 5(d), provides: "Quorum. — A quorum of the Committee shall consist of seven members."

Session Laws 2006-244, s. 5(e), provides: "Vacancies. — Any vacancy on the Committee shall be filled by the original appointing authority."

Session Laws 2006-244, s. 5(f), provides: "Purpose and Duties. — The Committee shall study:

"(1) The location of landfills in the State, with historical and current demographic information, including health statistics of the surrounding population of each site where available. The Committee shall identify landfills located in proximity to minority and low-income communities.

"(2) The impacts that landfills located in proximity to minority and low-income communities have on these communities with regard to human health, the environment, and economic development.

"(3) Factors, including economic factors, that may have caused landfills to be concentrated in minority and low-income communities in the State.

"(4) Past enforcement actions taken by the U.S. Environmental Protection Agency or the Department of Environment and Natural Resources for violations affecting human health or the environment at any landfill in the State in order to assess whether enforcement practices for violations at these sites have resulted in uneven enforcement outcomes, and to determine if alternative or stronger enforcement measures could be taken, or in the alternative if other methods could be used to allocate resources, in order to more equitably serve minority and low-income communities.

"(5) Statutes, rules, and policies used by State, regional, and local governments, and a review of the role played by these entities to influence or make siting and land-use decisions concerning landfills in the State.

"(6) Data and methodologies by which State, regional, and local governments might become more specifically aware of situations in which neighborhoods are at particularly high risk for potential threats to human health and the environment from the siting of landfills.

"(7) Approaches to ensure consideration of environmental justice and equity issues when formulating and implementing policies, procedures, and legislation within governmental agencies and other institutions."

Session Laws 2006-244, s. 5(g), provides: "Expenses of Members. — Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1."

Session Laws 2006-244, s. 5(h), provides: "Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Committee to aid in its work."

Session Laws 2006-244, s. 5(i), provides: "Consultants. — The Committee may hire consultants to assist with the study as provided in G.S. 120-32.02(b)."

Session Laws 2006-244, s. 5(j), provides: "Meetings. — The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Committee."

Session Laws 2006-244, s. 5(k), provides: "Report. — The Committee shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Committee shall terminate."

Session Laws 2006-244, s. 5(*l*), provides: "Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act."

Session Laws 2006-256, s. 4, provides, in part, that: "This act does not affect any franchise that has been awarded as of the date on which this act becomes effective (August 23, 2006) unless the franchise provides for a final vote of the governing board of the local government on the franchise and the final vote occurs on or after 1 November 2006, in which case the provisions of G.S. 130A-294(b1), as amended by that act, apply."

Effect of Amendments. — Session Laws 2006-256, ss. 1 through 3, effective August 23, 2006, and applicable to any application for a preliminary franchise or franchise that is filed with a local government on or after August 23, 2006, redesignated subdivisions (b1)(3) and (b1)(2) as subdivisions (b1)(2) and (b1)(3), respectively; in subdivision (b1)(2), substituted "A person who intends to apply" for "an applicant" at the beginning of the first sentence, in the second sentence, substituted "may adopt" for "shall adopt" and deleted "prior to the submittal by an applicant of an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill" following "G.S. 160A-319" near the end, added "all of the following" at the end of the last sentence; substituted "of" for "on" and inserted "sanitary" in subdivision (b1)(2)c, and added subdivisions (b1)(2)d through (b1)(2)f; added subdivision (b1)(2a); and rewrote subdivision (b1)(3).

§ 130A-295.02. Resident inspectors required at commercial hazardous waste facilities; recovery of costs for same.

(a) The Division shall employ full-time resident inspectors for each commercial hazardous waste facility located within the State. Such inspectors shall be employed and assigned so that at least one inspector is on duty at all times during which any component of the facility is in operation, is undergoing any maintenance or repair, or is undergoing any test or calibration. Resident inspectors shall be assigned to commercial hazardous waste management facilities so as to protect the public health and the environment, to monitor all aspects of the operation of such facilities, and to assure compliance with all laws and rules administered by the Division and by any other division of the Department. Such inspectors may also enforce laws or rules administered by any other agency of the State pursuant to an appropriate memorandum of agreement entered into by the Secretary and the chief administrative officer of such agency. The Division may assign additional resident inspectors to a facility depending upon the quantity and toxicity of waste managed at a facility, diversity of types of waste managed at the facility, complexity of management technologies utilized at the facility, the range of components which are included at the facility, operating history of the facility, and other factors relative to the need for on-site inspection and enforcement capabilities. The Division, in consultation with other divisions of the Department, shall define the duties of each resident inspector and shall determine whether additional resident inspectors are needed at a particular facility to meet the purposes of this section.

(b) The Division shall establish requirements pertaining to education, experience, and training for resident inspectors so as to assure that such inspectors are fully qualified to serve the purposes of this section. The Division shall provide its resident inspectors with such training, equipment, facilities, and supplies as may be necessary to fulfill the purposes of this section.

(c) As a condition of its permit, the owner or operator of each commercial hazardous waste facility located within the State shall provide and maintain such appropriate and secure offices and laboratory facilities as the Department may require for the use of the resident inspectors required by this section.

(d) Resident inspectors assigned to a commercial hazardous waste facility shall have unrestricted access to all operational areas of such facility at all times. For the protection of resident inspectors and the public, the provisions of G.S. 143-215.107(f) shall not apply to commercial hazardous waste facilities to which a resident inspector is assigned.

(e) No commercial hazardous waste facility shall be operated, undergo any maintenance or repair, or undergo any testing or calibration unless an inspector employed by the Division is present at the facility.

(f) The requirements of this section are intended to enhance the ability of the Department to protect the public health and the environment by providing the Department with the authority and resources necessary to maintain a rigorous inspection and enforcement program at commercial hazardous waste management facilities. The requirements of this section are intended to be supplementary to other requirements imposed on hazardous waste facilities. This section shall not be construed to relieve either the owner or the operator of any such facility or the Department from any other requirement of law or to require any unnecessary duplication of reporting or monitoring requirements.

(g) For the purpose of enforcing the laws and rules enacted or adopted for the protection of the public health and the environment, resident inspectors employed pursuant to this section may be commissioned as special peace officers as provided in G.S. 113-28.1. The provisions of Article 1A of Chapter 113 of the General Statutes shall apply to resident inspectors commissioned as special peace officers pursuant to this subsection.

(h) The Department shall determine the full cost of the employment and assignment of resident inspectors at each commercial hazardous waste facility located within the State. Such costs shall include, but are not limited to, costs incurred for salaries, benefits, travel, training, equipment, supplies, telecommunication and data transmission, offices and other facilities other than those provided by the owner or operator, and administrative expenses. The Department shall establish and revise as necessary a schedule of fees to be assessed on the users of each such facility to recover the actual cost of the resident inspector program at that facility. The operator of each such facility shall serve as the collection agent for such fees, shall account to the Department on a monthly basis for all fees collected, and shall deposit with the Department all funds collected pursuant to this section within 15 days following the last day of the month in which such fees are collected. Fees collected under this section shall be credited to the General Fund as nontax revenue.

(i) The Division shall establish and revise as necessary a program for assigning resident inspectors to commercial hazardous waste facilities so that scheduled rotation or equivalent oversight procedures ensure that each resident inspector will maintain objectivity.

(j) For purposes of this subsection, special purpose commercial hazardous waste facilities include: a facility that manages limited quantities of hazardous waste; a facility that limits its hazardous waste management activities to reclamation or recycling, including energy or materials recovery or a facility that stores hazardous waste primarily for use at such facilities; or a facility that is determined to be low risk under rules adopted by the Commission pursuant to this subsection. The Commission shall adopt rules establishing reasonable times and frequencies for the presence of a resident inspector on less than a full-time basis at special purpose commercial hazardous waste facilities. Rules adopted pursuant to this subsection shall establish classifications of special purpose hazardous waste facilities based on factors including, but not limited to, the size of the facility, the type of treatment or storage being performed, the nature and volume of waste being treated or stored, the uniformity, similarity, or lack of diversity of the waste streams, the predictability of the nature of the waste streams and their treatability, whether the facility utilizes automated monitoring or safety devices that adequately perform functions that would otherwise be performed by a resident inspector, the fact that reclamation or recycling is being performed at the facility, and the compliance history of the facility and its operator. Special purpose commercial hazardous waste facilities shall be subject to inspection at all times during which the facility is in operation, undergoing any maintenance or repair, or undergoing any test or calibration. Rules adopted pursuant to this subsection shall specify a minimum number of inspections during such times as the facility is subject to inspection. Special purpose commercial hazardous waste facilities that utilize hazardous waste as a fuel source shall be inspected a minimum of 40 hours per week, unless compliance data for these facilities can be electronically monitored and recorded off-site by the Department. The Department, considering the benefits provided by electronic monitoring, shall determine the number of hours of on-site inspection required at these facilities. The Department shall maintain records of all inspections at special purpose commercial hazardous waste facilities. Such records shall contain sufficient detail and shall be arranged in a readily understandable format so as to facilitate determination at any time as to whether the special purpose commercial hazardous waste facility is in compliance with the requirements of this subsection and of rules adopted pursuant to this subsection.

(k) For purposes of this section, a facility that utilizes hazardous waste as a fuel or that has used hazardous waste as a fuel within the preceding calendar year, and that is an affiliate of and adjacent or contiguous to a commercial hazardous waste facility, shall be subject to inspection as a special purpose commercial hazardous waste facility under subsection (j) of this section as if the facility that utilizes hazardous waste as a fuel were a part of the commercial hazardous waste facility.

(*l*) As used in this section, the words "affiliate", "parent", and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

(m) The Department shall report annually on or before 1 October to the Environmental Review Commission on the implementation of the resident inspectors program. (1989 (Reg. Sess., 1990), c. 1082, s. 1; 1991, c. 20, s. 2; c. 403, s. 4; c. 450, s. 2; 1993, c. 511, s. 1; c. 513, s. 2(b); c. 553, s. 41; 1995, c. 327, s. 1; 2006-79, s. 16.)

Effect of Amendments. — Session Laws 2006-79, s. 16, effective July 10, 2006, substituted "October" for "September" in subsection (m).

Part 2A. Nonhazardous Solid Waste Management.

§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

(a) No beverage shall be sold or offered for sale within the State in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(b) No person shall distribute, sell, or offer for sale in this State, any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials that are environmentally compatible.

(c)(1) No plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the bag is composed of material that is recyclable.

(2) It is the goal of the State that at least twenty-five percent (25%) of the plastic bags provided at retail outlets in the State to retail customers for carrying items purchased by the customer be recycled.

(d)(1) No person shall distribute, sell, or offer for sale in this State any polystyrene foam product that is to be used in conjunction with food for human consumption unless the product is composed of material that is recyclable.

(2) Repealed by Session Laws 1995, c. 321, s. 1.

(e) No person shall distribute, sell, or offer for sale in this State any rigid plastic container, including a plastic beverage container unless the container has a molded label indicating the plastic resin used to produce the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius.

The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on or near the bottom of the container and be clearly visible. A container having a capacity of less than eight fluid ounces or more than five gallons is exempt from the requirements of this subsection. The numbers and letters shall be as follows:

(1) For polyethylene terephthalate, the letters "PETE" and the number 1.
(2) For high density polyethylene, the letters "HDPE" and the number 2.
(3) For vinyl, the letter "V" and the number 3.
(4) For low density polyethylene, the letters "LDPE" and the number 4.
(5) For polypropylene, the letters "PP" and the number 5.
(6) For polystyrene, the letters "PS" and the number 6.
(7) For any other, the letters "OTHER" and the number 7.

(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.
(2) Used oil.
(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
(4) White goods.
(5) Antifreeze (ethylene glycol).
(6) Aluminum cans.
(7) **(Effective until January 1, 2008)** Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition against landfilling whole tires applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(7) **(Effective January 1, 2008, until October 1, 2009)** Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition of the disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(7) **(Effective October 1, 2009)** Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(8) Lead-acid batteries, as provided in G.S. 130A-309.70.
(9) **(Effective January 1, 2008)** Beverage containers that are required to be recycled under G.S. 18B-1006.1.
(10) **(Effective October 1, 2009)** Motor vehicle oil filters.
(11) **(Effective October 1, 2009)** Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil.
(12) **(Effective October 1, 2009)** Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.
(13) Oyster shells.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:

(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.
(6) **(Effective January 1, 2008)** Beverage containers that are required to be recycled under G.S. 18B-1006.1.

(f2) Subsection (f1) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill shall not be construed as a violation of subsection (f) of this section.

(i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of subsection (f1) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.

(j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to prevent the incineration of the solid waste listed in subsection (f1) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in subsection (f1) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to subsection (f1) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste.

(k) **(Effective October 1, 2009)** A county or city may petition the Department for a waiver from the prohibition on disposal of a material described in subdivisions (9), (10), (11) and (12) of subsection (f) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship.

(*l*) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (12) of subsection (f) of this section, the oyster shells may be disposed of in the landfill. (1989, c. 784, s. 2; 1991, c. 23, s. 1; c. 375, s. 1; 1991 (Reg. Sess., 1992), c. 932, ss. 1, 2; 1993, c. 290, s. 1; 1995, c. 321, s. 1; c. 504, s. 9; 1995 (Reg. Sess., 1996), c. 594, s. 17; 2001-440, ss. 3.1, 3.2; 2005-348, s. 3; 2005-362, ss. 2, 3; 2006-226, s. 24(a); 2006-264, ss. 98.5(a), (c).)

Editor's Note. —

Session Laws 2005-348, s. 3, added subdivision (f)(9). Session Laws 2005-362, s. 2, added subdivisions (f)(9) through (12), which were redesignated subdivisions (f)(10) through (13) at the direction of the Revisor of Statutes.

Session Laws 2005-362, s. 4, as amended by Session Laws 2006-264, s. 98.5(c), provides:

"Sections 1, 2, and 3 of this act become effective 1 October 2009 except that G.S. 130A-309.10(f)(12) [now G.S. 130A-309.10(f)(13)], as enacted by Section 2 of this act, becomes effective 1 January 2007. Section 4 of this act becomes effective 1 January 2007."

Effect of Amendments. —

Session Laws 2005-362, ss. 2 and 3, substituted "prohibition on disposal of whole tires in landfills" for "prohibition against landfilling whole tires" in subdivision (f)(7), and added subdivisions (f)(10) through (f)(13) and subsection (k). For effective date, see editor's note.

Session Laws 2006-226, s. 24(a), effective October 1, 2009, deleted "of the disposal of" following "The prohibition" in the second sentence of subdivision (f)(7).

Session Laws 2006-264, s. 98.5(a), effective January 1, 2007, added (*l*).

Part 5. Brownfields Property Reuse Act.

§ 130A-310.31. Definitions.

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and G.S. 130A-310 apply throughout this Part.

(b) Unless a different meaning is required by the context:

(1) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(2) "Brownfields agreement" means an agreement between the Department and a prospective developer that meets the requirements of G.S. 130A-310.32.

(3) "Brownfields property" or "brownfields site" means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program other than Part 2A of Article 21A of Chapter 143 of the General Statutes or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.) except for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605.

(4) "Contaminant" means a regulated substance released into the environment.

(5) "Unrestricted use standards" when used in connection with "cleanup", "remediated", or "remediation" means contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission, or the Department instead of the site-specific contaminant levels established pursuant to this Part.

(6) "Environmental contamination" means contaminants at the property requiring remediation and that are to be remediated under the brownfields agreement including, at a minimum, hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 130A-310; a hazardous substance, as defined in G.S. 143-215.77; or oil, as defined in G.S. 143-215.77.

(7) "Local government" means a town, city, or county.

(8) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(9) "Potentially responsible party" means a person who is or may be liable for remediation under a remedial program.

(10) "Prospective developer" means any person with a bona fide, demonstrable desire to either buy or sell a brownfields property for the purpose of developing or redeveloping that brownfields property and

who did not cause or contribute to the contamination at the brownfields property.

(11) "Regulated substance" means a hazardous waste, as defined in G.S 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program implemented by the Department other than Part 2A of Article 21A of Chapter 143 of the General Statutes.

(12) "Remedial program" means a program implemented by the Department for the remediation of any contaminant, including the Inactive Hazardous Sites Response Act of 1987 under Part 3 of this Article, the Superfund Program under Part 4 of this Article, and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes.

(13) "Remediation" means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

(14) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition). (1997-357, s. 2; 1997-392, ss. 4.2-4.4; 2001-384, s. 11; 2006-71, ss. 1, 2, 3.)

Effect of Amendments. — Session Laws 2006-71, ss. 1 through 3, effective January 1, 2007, added "(42 U.S.C. § 9601, et seq.) except for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605" at the end of subdivision (b)(3); in subdivision (b)(5), substituted "contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply" for "that cleanup or remediation of contamination complies" and "site-specific contaminant levels established pursuant to this Part" for "risk-based standards established by the Commission pursuant to this Part"; and substituted "with a bona fide, demonstrable desire" for "who desires" in subdivision (b)(10).

§ 130A-310.34. Public notice and community involvement.

(a) A prospective developer who desires to enter into a brownfields agreement shall notify the public and the community in which the brownfields property is located of planned remediation and redevelopment activities. The prospective developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent to the Department. The Notice of Intent shall provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed brownfields agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Department, the prospective developer shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the brownfields property. The prospective developer shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the brownfields property is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The prospective developer shall also conspicuously post a copy of the summary of the Notice of Intent at the brownfields site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least 30 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within 21 days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least 15 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Department shall also direct the prospective developer to publish, at least 15 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting.

(d) Prior to entering into a brownfields agreement, the Department shall take into account the comment received during the comment period and at the public meeting if the Department holds a public meeting. The Department shall incorporate into the brownfields agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Department shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis and to written comment from the units of local government that have taxing jurisdiction over the brownfields property. (1997-357, s. 2; 2000-158, s. 2; 2006-71, ss. 4, 5.)

Effect of Amendments. — Session Laws 2006-71, ss. 4 and 5, effective January 1, 2007, substituted "30" for "60" in subsection (b); and, in subsection (c), substituted "21" for "30" in the first sentence, and "15" for "30" in the third and fourth sentences.

§ 130A-310.37. Construction of Part.

(a) This Part is not intended and shall not be construed to:

(1) Affect the ability of local governments to regulate land use underArticle 19 of Chapter 160A of the General Statutes and Article 18 of Chapter 153A of the General Statutes. The use of the identified brownfields property and any land-use restrictions in the brownfields agreement shall be consistent with local land-use controls adopted under those statutes.

(2) Amend, modify, repeal, or otherwise alter any provision of any reme-

dial program or other provision of this Chapter, Chapter 143 of the General Statutes, or any other provision of law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a brownfields agreement.

(3) Prevent or impede the immediate response of the Department or responsible party to an emergency that involves an imminent or actual release of a regulated substance that threatens public health or the environment.

(4) Relieve a person receiving liability protection under this Part from any liability for contamination later caused by that person on a brownfields property.

(5) Affect the right of any person to seek any relief available against any party to the brownfields agreement who may have liability with respect to the brownfields property, except that this Part does limit the relief available against any party to a brownfields agreement with respect to remediation of the brownfields property to the remediation required under the brownfields agreement.

(6) Affect the right of any person who may have liability with respect to the brownfields property to seek contribution from any other person who may have liability with respect to the brownfields property and who neither received nor has liability protection under this Part.

(7) Prevent the State from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically required to be enforced by the federal government as a condition to receive program authorization, delegation, primacy, or federal funds.

(8) Create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or for the pollution of the land, air, or waters of this State on a brownfields property.

(9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.

(b) Notwithstanding the provisions of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering, monitoring, or enforcing a brownfields agreement or a Notice of Brownfields Property under this Part or any other action implementing this Part.

(c) The Department shall not enter into a brownfields agreement for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605. (1997-357, s. 2; 1997-392, s. 4.5; 2006-71, s. 6.)

Effect of Amendments. — Session Laws 2006-71, s. 6, effective January 1, 2007, rewrote subsection (c).

Part 6. Mercury Switch Removal.

§ 130A-310.50. (For expiration date — see note) Definitions.

As used in this Part:

(1) "Capture rate" means the annual removal, collection, and recovery of

mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles.

(2) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap metal recycling facility for the purpose of recycling.

(3) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle.

(4) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared as provided in G.S. 130A-310.53.

(5) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly installed in a vehicle.

(6) "Scrap metal recycling facility" means a fixed location where machinery and equipment are used to process scrap metal into specific grades of scrap metal for sale and whose primary product is scrap iron, scrap steel, or nonferrous metallic scrap.

(7) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.

(8) "Vehicle recycler" means an individual or entity engaged in the business of acquiring, dismantling, or destroying six or more end-of-life vehicles in a calendar year for the primary purpose of resale of parts of the vehicle. (2005-384, s. 1; 2006-255, s. 5.)

Part 6 Has a Delayed Repeal Date. — Session Laws 2005-384, which enacted this Part, in s. 4, as amended by Session Laws 2006-255, s. 5, provides: "Sections 1, 3, and 4 of this act are effective when this act becomes law (September 13, 2005), except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2007. Section 2 of this act becomes effective October 1, 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before January 1, 2007. This act expires on July 1, 2026."

§ 130A-310.51. (For expiration date — see note) Purpose.

The purpose of this Part is to reduce the quantity of mercury that is released into the environment by removing mercury switches from end-of-life vehicles and by creating a removal, collection, and recovery program for mercury switches that are removed from end-of-life vehicles in this State. (2005-384, s. 1; 2006-255, s. 5.)

Part 6 Has a Delayed Repeal Date. — Session Laws 2005-384, which enacted this Part, in s. 4, as amended by Session Laws 2006-255, s. 5, provides: "Sections 1, 3, and 4 of this act are effective when this act becomes law (September 13, 2005), except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2007. Section 2 of this act becomes effective October 1, 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before January 1, 2007. This act expires on July 1, 2026."

§ 130A-310.52. (For expiration date — see note) Mercury minimization plan.

(a) The Department shall develop and administer a mercury minimization plan to achieve the goal of having a capture rate of at least ninety percent (90%). In preparing the plan, the Department shall consult with manufacturers of vehicles, who shall participate in the development of the plan on an advisory basis. To the extent practicable, the mercury minimization plan shall utilize the currently available end-of-life vehicle recycling infrastructure. To the extent adequate, affordable, and environmentally sound end-of-life vehicle recycling infrastructure is unavailable, the plan shall provide for the development of this infrastructure.

(b) A plan developed under subsection (a) of this section shall include the following:

(1) A compilation of the make, model, and year of any vehicle that was sold or offered for sale by the vehicle manufacturer and contains one or more mercury switches and a description and the location of each mercury switch in the vehicle. A vehicle manufacturer shall report to the Department the information needed to make the compilation.

(2) A description of all safe and environmentally sound methods for removal of mercury switches from end-of-life vehicles. A vehicle manufacturer shall report to the Department the information needed to make the description.

(3) A presumption that if the manufacturer does not know or is uncertain as to whether or not a switch contains mercury, the switch does contain mercury.

(4) A system to mark end-of-life vehicles that are to be shredded or crushed to indicate the presence or absence of a mercury switch.

(5) Educational materials to assist a vehicle recycler or a scrap metal recycling facility in undertaking a safe and environmentally sound method for the removal of the mercury switches from end-of-life vehicles. The materials shall include information on hazards related to mercury and on the proper handling of mercury.

(6) A method for storage and disposal of the mercury switches, including packaging and shipping of mercury switches to permitted recycling, storage, or disposal facilities. To the extent adequate, affordable, and environmentally sound mercury switch disposal technology is unavailable, a method for the temporary storage of mercury switches. (2005-384, s. 1; 2006-255, s. 5.)

Part 6 Has a Delayed Repeal Date. — Session Laws 2005-384, which enacted this Part, in s. 4, as amended by Session Laws 2006-255, s. 5, provides: "Sections 1, 3, and 4 of this act are effective when this act becomes law (September 13, 2005, except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2007. Section 2 of this act becomes effective October 1, 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before January 1, 2007. This act expires on July 1, 2026."

§ 130A-310.53. (Effective July 1, 2007; For expiration date — see note) Removal of mercury switches from end-of-life vehicles.

(a) A vehicle recycler that conveys ownership of an end-of-life vehicle to a scrap metal recycling facility shall remove all mercury switches identified in the mercury minimization plan prior to delivery of the vehicle to the scrap metal recycling facility. If a mercury switch is inaccessible, the fact that the mercury switch remains in the vehicle shall be noted on the vehicle recycler's invoice.

(b) A scrap metal recycling facility that accepts an end-of-life vehicle that has not been flattened, crushed, baled, or shredded and that contains mercury switches shall remove the mercury switches before the end-of-life vehicle is flattened, crushed, baled, or shredded unless the mercury switch is inaccessible.

(c) A mercury switch is inaccessible if, due to the condition of the vehicle, the switch cannot be removed in accordance with the mercury minimization plan and removal of the switch would significantly increase the risk of a release of mercury into the environment.

(d) A vehicle recycler or scrap metal recycling facility that removes mercury switches pursuant to subsection (a) or (b) of this section shall make quarterly reports to the Department on the following:

(1) The number of vehicles that it processed for recycling.
(2) The number of vehicles from which it removed a mercury switch by make.
(3) The number of vehicles for which it could not remove the mercury switch because the switch was inaccessible.

(e) Mercury switches that are removed from end-of-life vehicles are considered 'universal waste' as defined in 40 Code of Federal Regulations § 273.9 (1 July 2004 Edition). Mercury switches that are removed from end-of-life vehicles shall be collected, transported, treated, stored, disposed of, and otherwise handled in accordance with rules adopted by the Commission governing universal waste. (2005-384, s. 1; 2006-255, s. 5.)

Part 6 Has a Delayed Repeal Date. — Session Laws 2005-384, which enacted this Part, in s. 4, as amended by Session Laws 2006-255, s. 5, provides: "Sections 1, 3, and 4 of this act are effective when this act becomes law (September 13, 2005), except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2007. Section 2 of this act becomes effective October 1, 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before January 1, 2007. This act expires on July 1, 2026."

§ 130A-310.54. (For expiration date — see note) Funds to implement plan.

(a) The Mercury Pollution Prevention Account is established in the Department. Revenue is credited to the Account from the certificate of title fee under G.S. 20-85.

(b) Revenue in the Mercury Pollution Prevention Account shall be used to reimburse the Department and others for costs incurred in implementing the mercury minimization plan. The reimbursable costs are:

(1) Five dollars ($5.00) for each mercury switch removed by a vehicle recycler or scrap metal recycling facility pursuant to this Article.
(2) Costs incurred by the Department in administering the plan.

(c) **(Effective July 1, 2007)** The Department shall reimburse vehicle recyclers and scrap metal recycling facilities based on the quarterly reports submitted under G.S. 130A-310.53. The Department may request any information needed to determine the accuracy of the reports. (2005-384, s. 1; 2006-255, s. 5.)

Part 6 Has a Delayed Repeal Date. — Session Laws 2005-384, which enacted this Part, in s. 4, as amended by Session Laws 2006-255, s. 5, provides: "Sections 1, 3, and 4 of this act are effective when this act becomes law (September 13, 2005), except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2007. Section 2 of this act becomes effective October 1, 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before January 1, 2007. This act expires on July 1, 2026."

§ 130A-310.55. (Effective July 1, 2007; For expiration date — see note) Violations of Article; enforcement.

(a) It is unlawful for a person to do any of the following:

(1) Knowingly flatten, crush, bale, shred, or otherwise alter the condition of a vehicle from which accessible mercury switches have not been removed, in any manner that would prevent or significantly hinder the removal of a mercury switch.

(2) Willfully fail to remove a mercury switch when the person is required to do so.

(3) Knowingly make a false report that a mercury switch has been removed from an end-of-life vehicle.

(4) Obtain a mercury switch from another source and falsely report that it was removed from a vehicle processed for recycling.

(b) This Part may be enforced as provided in Part 2 of Article 1 of this Chapter. (2005-384, s. 1; 2006-255, s. 5.)

Part 6 Has a Delayed Repeal Date. — Session Laws 2005-384, which enacted this Part, in s. 4, as amended by Session Laws 2006-255, s. 5, provides: "Sections 1, 3, and 4 of this act are effective when this act becomes law (September 13, 2005), except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2007. Section 2 of this act becomes effective October 1, 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before January 1, 2007. This act expires on July 1, 2026."

§ 130A-310.56. (For expiration date — see note) Evaluation of vehicle design changes that affect mercury recyclability; reporting requirements.

(a) Each vehicle manufacturer shall, either individually or as part of a group, submit an annual report to the Department that describes in detail the status of vehicle design changes that are intended to facilitate recycling of vehicle components that contain mercury. The report is due on or before July 1. At a minimum, the report shall include all of the following:

(1) For each make and model for the upcoming model year, a list of all vehicle components that contain mercury.

(2) A description of all design changes that each manufacturer has implemented for the upcoming model year or plans to implement in future model years to reduce or eliminate vehicle components that contain mercury, the achieved or anticipated amount of each reduction.

(3) A summary of all policies that each manufacturer has implemented or will implement to ensure that the manufacturers' vehicles are designed to be recycled in a safe, cost-effective, and environmentally sound manner.

(4) A summary of any recommendations, complaints, or reports that the manufacturer has received within the previous calendar year from vehicle recyclers, scrap metal recycling facilities, government entities, or other persons, as well as any other information available to the manufacturer, regarding vehicle design features that adversely affect the recyclability of vehicle components that contain mercury.

(b) A vehicle manufacturer or group of vehicle manufacturers that submits the report required by subsection (a) of this section may designate any information in the report that constitutes a trade secret, as defined in G.S. 66-152, as confidential information in accordance with G.S. 132-1.2. Information so designated shall be protected as provided in G.S. 130A-304.

(c) The Department may evaluate the extent to which vehicle design promotes or impedes recycling of vehicle components that contain mercury. The Department may conduct hearings from time to time to receive public comment regarding vehicle design changes that affect recycling of vehicle components that contain mercury. The Department may develop recommendations as to changes in vehicle design that would further promote the recyclability of these components. If the Department develops recommendations pursuant to this subsection, it shall report these recommendations, together with its findings and any legislative proposals, to the Environmental Review Commission. (2005-384, s. 1; 2006-255, s. 5.)

Part 6 Has a Delayed Repeal Date. — Session Laws 2005-384, which enacted this Part, in s. 4, as amended by Session Laws 2006-255, s. 5, provides: "Sections 1, 3, and 4 of this act are effective when this act becomes law (September 13, 2005), except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2007. Section 2 of this act becomes effective October 1, 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before January 1, 2007. This act expires on July 1, 2026."

§ 130A-310.57. (For expiration date — see note) Report on plan.

The Department shall publish an annual report on the mercury minimization plan on or before November 1. The report shall include, at a minimum, all of the following:

(1) A detailed description and documentation of the capture rate achieved.
(2) In the event that a capture rate of at least ninety percent (90%) is not achieved, a description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation.
(3) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed.
(4) A statement that details the costs required to implement the mercury minimization plan. (2005-384, s. 1; 2006-255, s. 5.)

Part 6 Has a Delayed Repeal Date. — Session Laws 2005-384, which enacted this Part, in s. 4, as amended by Session Laws 2006-255, s. 5, provides: "Sections 1, 3, and 4 of this act are effective when this act becomes law (September 13, 2005), except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2007. Section 2 of this act becomes effective October 1, 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before January 1, 2007. This act expires on July 1, 2026."

§ 130A-310.58. (For expiration date — see note) Adoption of rules; administrative procedure.

(a) The Department may adopt rules to implement this Part.

(b) Chapter 150B of the General Statutes governs implementation of this Part. (2005-384, s. 1; 2006-255, s. 5.)

Part 6 Has a Delayed Repeal Date. — Session Laws 2005-384, which enacted this Part, in s. 4, as amended by Session Laws 2006-255, s. 5, provides: "Sections 1, 3, and 4 of this act are effective when this act becomes law (September 13, 2005), except that G.S. 130A-

310.53, 130A-310.54(c), and 130A-310.55 become effective July 1, 2007. Section 2 of this act becomes effective October 1, 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before January 1, 2007. This act expires on July 1, 2026."

ARTICLE 10.

North Carolina Drinking Water Act.

§ 130A-315. Drinking water rules.

Nutrient management strategy. — Session Laws 2005-190, s. 3(c), as amended by Session Laws 2006-259, s. 31(a), effective July 15, 2005, provides: "The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July 2009. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy."

Implementation; rulemaking. — Session Laws 2005-190, s. 3(e), as amended by Session Laws 2006-259, s. 31(b), effective July 15, 2005, provides: "The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July 2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective."

Other drinking water supply reservoirs. — Session Laws 2005-190, s. 4, as amended by Session Laws 2006-259, s. 31(c), effective July 15, 2005, provides: "The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

§ 130A-317. Department to provide advice; submission and approval of public water system plans.

(a) The Department shall advise all persons and units of local government locating, constructing, altering or operating or intending to locate, construct, alter or operate a public water system of the most appropriate source of water supply and the best practical method of purifying water from that source having regard to the present and prospective needs and interests of other persons and units of local government which may be affected. The Department shall also advise concerning accepted engineering practices in the location, construction, alteration and operation of public water systems.

(b) All persons and units of local government constructing or altering a public water system shall give prior notice and submit plans, specifications and other information to the Department. The Commission shall adopt rules providing for the amount of prior notice required to be given and the nature and detail of the plans, specifications and other information required to be submitted. The Commission shall take into consideration the complexity of the construction or alteration which may be involved and the resources of the Department to review the plans, specifications and other information. The Department shall review the plans, specifications and other information, and notify the person, Utilities Commission and unit of local government of compliance or lack of compliance with applicable statutes and rules of the Commission.

(c) No person or unit of local government shall begin construction or alteration of a public water system or award a contract for construction or alteration unless all of the following conditions are met:

(1) The plans for construction or alteration have been prepared by an engineer licensed by this State.
(2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water rules.
(3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, county or regional system.
(4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system.
(5) The Department has approved the plans and specifications.

(d) Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own approval program in lieu of State approval of water system plans required in subsection (c) of this section for construction or alteration of the distribution system of a proposed or existing public water system, subject to the prior certification of the Department. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where water service is already being provided to the permit applicant by the municipality or connection to the municipal water system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where water service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of an approval program and statement submitted by any local government, commission, authority, or board, the Department shall certify any local program that meets all of the following conditions:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Article, and the standards and rules adopted pursuant to this Article.
(2) Provides that the Department receives notice and a copy of each application for approval and that the Department receives copies of approved plans.
(3) Provides that plans and specifications for all construction and alterations be prepared by or under the direct supervision of an engineer licensed to practice in this State.
(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process.

(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program. A local government, commission, authority, or board may either employ an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State or contract with an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State in order to provide for adequate engineering staff under this subdivision.

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the public water system.

(8) Provides that an approved system, as constructed or altered, will be capable of compliance with the drinking water rules.

(9) Is approved by the Department as adequate to meet the requirements of this Article and any applicable rules adopted pursuant to this Article.

(e) The Department may deny, suspend, or revoke the certification of a local program upon a finding that a violation of the provisions in subsection (d) of this section has occurred. A local government administering an approval program shall be given notice that there has been a tentative decision to deny, suspend, or revoke certification and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged. If a violation of the provisions in subsection (d) of this section presents an imminent hazard, certification may be suspended or revoked immediately. The Department shall give notice of the immediate suspension or revocation and notice that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged.

(f) Notwithstanding any other provisions of subsection (d) of this section, if the Department determines that a public water system is violating plan approval requirements of a local program and that the local government has not acted to enforce those approval requirements, the Department may, after written notice to the local government, take enforcement action in accordance with the provisions of this Article. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 697, s. 1; 1987, c. 827, s. 1; 2006-238, s. 1.)

Effect of Amendments. — Session Laws 2006-238, s. 1, effective August 13, 2006, in subsection (c), added "all of the following conditions are met" at the end of the introductory paragraph and made minor punctuation changes; in subsection (d), added "meets all of the following conditions" at the end of the introductory paragraph, added the second sentence of subdivision (d)(5), and made minor punctuation and stylistic changes; added the subsection (e) and (f) designations; and substituted "subsection (d) of this section" for "this subsection" near the beginning of subsection (f).

§ 130A-320. Sanitation of watersheds; rules; inspections.

Nutrient management strategy. — Session Laws 2005-190, s. 3(c), as amended by Session Laws 2006-259, s. 31(a), effective July 15, 2005, provides: "The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July 2009. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy."

Implementation; rulemaking. — Session Laws 2005-190, s. 3(e), as amended by Session Laws 2006-259, s. 31(b), effective July 15, 2005, provides: "The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July 2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective."

Other drinking water supply reservoirs. — Session Laws 2005-190, s. 4, as amended by Session Laws 2006-259, s. 31(c), effective July 15, 2005, provides: "The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

§ 130A-328. Public water system operating permit and permit fee.

(a) No person shall operate a community or non transient non-community water system who has not been issued an operating permit by the Department. A community or non transient non-community water system operating permit shall be valid from January 1 through December 31 of each year unless suspended or revoked by the Department for cause. The Commission shall adopt rules concerning permit issuance and renewal and permit suspension and revocation. The annual fees in subsection (b) shall be prorated on a monthly basis for permits obtained after January 1 of each year.

(b) The following fees are imposed for the issuance or renewal of a permit to operate a community or non transient non-community water system; the fees are based on the number of persons served by the system:

	Fee
Non Community Water Systems:	
Base fee:	
Non transient non-community	$150
Community Water Systems:	
Number of Persons Served	
50 or fewer	$255
More than 50 but no more than 100	$270
More than 100 but no more than 200	$330
More than 200 but no more than 300	$350
More than 300 but no more than 400	$385
More than 400 but no more than 500	$420
More than 500 but no more than 750	$780

	Fee
More than 750 but no more than 1000	$810
More than 1000 but no more than 2000	$840
More than 2000 but no more than 3000	$870
More than 3000 but no more than 4000	$1350
More than 4000 but no more than 5000	$1460
More than 5000 but no more than 7500	$1925
More than 7500 but no more than 10,000	$2065
More than 10,000 but no more than 25,000	$2600
More than 25,000 but no more than 50,000	$2925
More than 50,000 but no more than 75,000	$4250
More than 75,000 but no more than 100,000	$4675
More than 100,000 but no more than 250,000	$5100
More than 250,000 but no more than 500,000	$5525
More than 500,000	$5950

(c) The following fees are imposed for the review of plans, specifications, and other information submitted to the Department for approval of construction or alteration of a public water system. The fees are based on the type of constructions or alteration proposed:

Distribution system:	Fee
Construction of water lines, less than 5000 linear feet	$150
Construction of water lines, 5000 linear feet or more	$200
Other construction or alteration to a distribution system	$75
Ground water system:	
Construction of a new ground water system or adding a new well	$200
Alteration to an existing ground water system	$100
Surface Water system:	
Construction of a new surface water treatment facility	$250
Alteration to an existing surface water treatment facility	$150
Water System Management Plan review	$75
Miscellaneous changes or maintenance not covered above	$50

(d) The Department may charge an administrative fee of up to one hundred fifty dollars ($150.00) for failure to pay the permit fee by January 31 of each year.

(e) All fees collected under this section shall be applied to the costs of administering and enforcing this Article. (1991, c. 576, s. 1; 1991 (Reg. Sess., 1992), c. 811, s. 6; c. 1039, s. 11; 2006-66, s. 11.7(a).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 11.7(b), provides: "The Department of Environment and Natural Resources may create a schedule for phasing in the new fees added to G.S. 130A-328, as amended by subsection (a) of this section, over multiple operating permit cycles."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 11.7(a), effective January 1, 2007, substituted "Public" for "Community" in the catchline; inserted "or non transient non-community" following "a community" in (a); rewrote subsection (b); added subsections (c) and (d); and redesignated former second paragraph of (b) as present (e).

Article 11.

Wastewater Systems.

§ 130A-333. Purpose.

Editor's Note. —

Session Laws 2006-255, s. 5.1(b), provides: "Management, including land application, of septage generated by the operation of a wastewater system permitted under Article 11 of Chapter 130A of the General Statutes shall be governed by 40 Code of Federal Regulations Part 503 (July 1, 2003, Edition) and rules adopted by the Commission for Health Services pursuant to G.S. 130A-291.1, as amended by subsection (a) of this section."

§ 130A-334. Definitions.

Editor's Note. —

Session Laws 2006-136, s. 1, provides: "The definitions in G.S. 130A-334 apply throughout this act. For the purposes of this act, 'Commission' means the Commission for Health Services. 'Licensed soil scientist' has the same meaning as in G.S. 89F-3(3)."

Session Laws 2006-136, s. 2(a), provides: "The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 August 2006 and to terminate 1 July 2011 regarding the process for the issuance of an improvement permit for an on-site wastewater system pursuant to Article 11 of Chapter 130A of the General Statutes. A county that meets all of the following criteria may participate in the pilot program:

"(1) The population of the county must not exceed 25,000 according to the most recent federal decennial census.

"(2) The county must have more than 900 applications for improvement permits or authorizations to construct that are pending before the local health department on the effective date of this act.

"(3) The board of county commissioners and the local board of health for the county must both approve a resolution requesting to participate in the pilot program."

Session Laws 2006-136, s. 2(b), provides: "Notwithstanding G.S. 130A-336, the Department of Environment and Natural Resources shall authorize licensed soil scientists and the local health department to evaluate any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system. The local health department shall issue an improvement permit after one of the following has occurred:

"(1) A soil and site evaluation has been completed by an authorized agent of the Department or local health department that finds that the site is suitable for a wastewater system.

"(2) The local health department receives a completed soil and site evaluation for a wastewater system designed to treat 3,000 gallons per day or less of sewage that has been signed and sealed by a licensed soil scientist that finds that the site is suitable for a wastewater system."

Session Laws 2006-136, s. 2(c), provides: "A licensed soil scientist who submits a completed soil and site evaluation pursuant to this section shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars ($1,000,000) per claim and that shall remain in force for at least six years after the date on which the improvement permit is approved. The licensed soil scientist shall provide the local health department with evidence satisfactory to the local health department that the coverage required by this section is in force. The local health department shall maintain a register of all licensed soil scientists who work in the county that have submitted completed soil and site evaluations under this section."

Session Laws 2006-136, s. 2(d), provides: "An improvement permit issued pursuant to this section shall include:

"(1) For permits that are valid for five years, a site plan drawn to scale with setbacks labeled. No permits shall be issued that are valid without expiration.

"(2) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.

"(3) The type and layout of the proposed wastewater system and its location.

"(4) The design wastewater flow and characteristics.

"(5) Any proposed landscape, site, drainage, or soil modifications.

"(6) A detailed soil profile description of at least two locations within the proposed disposal area. The detailed soil profile descriptions shall include soil taxonomic classifications, horizons, depth, texture, structure, soil wetness conditions, restrictive horizons, matrix color, and redoximorphic colors.

"(7) Any other information required by the rules of the Commission."

Session Laws 2006-136, s. 2(e), provides: "An improvement permit issued pursuant to this section shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale."

Session Laws 2006-136, s. 2(f), provides: "The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to the Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit, not to exceed five years, and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department of Environment and Natural Resources and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction."

Session Laws 2006-136, s. 2(g), provides: "When a local health department issues an improvement permit or authorization to construct based upon work performed by a licensed soil scientist pursuant to this section, the improvement permit or authorization to construct shall bear a statement that reads: 'The soil, site, and system evaluation and documentation necessary to issue this ________ (improvement permit or authorization to construct) was performed by ________ (name of licensed soil scientist), a licensed soil scientist, license number ________ (license number).'."

Session Laws 2006-136, s. 2(h), provides: "When a local health department denies an application for an improvement permit or authorization to construct prepared by a licensed soil scientist pursuant to this section, the denial shall include a written report that specifically identifies the provisions of Article 11 of Chapter 130A of the General Statutes or rules adopted pursuant to the Article on which the denial is based."

Session Laws 2006-136, s. 2(i), provides: "A local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct. A licensed soil scientist who reviews a completed application for an improvement permit or authorization to construct under this subsection shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars ($1,000,000) per claim."

Session Laws 2006-136, s. 2(j), provides: "The Department of Environment and Natural Resources shall: (i) specify uniform procedures for the review of an application prepared by a licensed soil scientist; (ii) establish documentation that must be included in the application; (iii) establish the necessary documentation that must be included in the local health department's written permit application review report; and (iv) specify the rights and obligations of each party."

Session Laws 2006-136, s. 2(k), provides: "In addition to any fees authorized under G.S. 130A-39(g), a local board of health may impose an additional fee not to exceed two hundred dollars ($200.00) for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist pursuant to this section."

Session Laws 2006-136, s. 2(*l*), provides: "Except as provided in this section, the provisions of Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to that Article apply to this section. This section applies only to the counties eligible to participate in the pilot program."

Session Laws 2006-136, s. 3, provides: "In order to determine the effectiveness of the pilot program, the Department of Environment and Natural Resources shall evaluate whether: (i) the program resulted in a reduction in the length of time improvement permits or authorizations to construct are pending in the participating counties; (ii) the program resulted in increased system failures or other adverse impacts; and (iii) the program resulted in new or increased environmental impacts. The Department shall annually report its interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission beginning 1 October 2007. The

Department shall report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2011."

§ 130A-335.1. Effluent filters and access devices for certain septic tank systems.

(a) The person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who manufactures, installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.
(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.
(3) Be designed and constructed to allow for routine maintenance.
(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use.

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

(1) Be of sufficient size to facilitate inspection and service.
(2) Be designed and constructed to equal or exceed the minimum loading specifications applicable to the septic tank.
(3) Prevent water entry.
(4) Come to within six inches of the finished grade.
(5) Be visibly marked so that the access device can be readily located. (1998-126, s. 2; 2006-255, s. 4; 2006-264, s. 63(a).)

Editor's Note. — Session Laws 2006-264, s. 63(a), rewrote the introductory paragraph of subsection (a). However, Session Laws 2006-264, s. 63(b) provided that if Session Laws 2006-255 becomes law, Session Laws 2006-264, s. 63 is repealed. Therefore, the amendments made by Session Laws 2006-264, s. 63(a) have not been implemented.

Effect of Amendments. — Session Laws 2006-255, s. 4, effective August 23, 2006, in subsection (a), substituted "person who manufactures, installs, repairs, or pumps any" for "manufacturer of each" in the beginning of the first sentence, added the second sentence, and substituted "effluent filter" for "septic tank system" near the beginning of the third sentence.

§ 130A-336. Improvement permit and authorization for wastewater system construction required.

Editor's Note. — Session Laws 2006-136, s. 1, provides: "The definitions in G.S. 130A-334 apply throughout this act. For the purposes of this act, 'Commission' means the Commission for Health Services. 'Licensed soil scientist' has the same meaning as in G.S. 89F-3(3)."

Session Laws 2006-136, s. 2(a), provides: "The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 August 2006 and to terminate 1 July 2011 regarding the process for the issuance of an improvement permit for an on-site wastewater system pursuant to Article 11 of Chapter 130A of the General

Statutes. A county that meets all of the following criteria may participate in the pilot program:

"(1) The population of the county must not exceed 25,000 according to the most recent federal decennial census.

"(2) The county must have more than 900 applications for improvement permits or authorizations to construct that are pending before the local health department on the effective date of this act.

"(3) The board of county commissioners and the local board of health for the county must both approve a resolution requesting to participate in the pilot program."

Session Laws 2006-136, s. 2(b), provides: "Notwithstanding G.S. 130A-336, the Department of Environment and Natural Resources shall authorize licensed soil scientists and the local health department to evaluate any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system. The local health department shall issue an improvement permit after one of the following has occurred:

"(1) A soil and site evaluation has been completed by an authorized agent of the Department or local health department that finds that the site is suitable for a wastewater system.

"(2) The local health department receives a completed soil and site evaluation for a wastewater system designed to treat 3,000 gallons per day or less of sewage that has been signed and sealed by a licensed soil scientist that finds that the site is suitable for a wastewater system."

Session Laws 2006-136, s. 2(c), provides: "A licensed soil scientist who submits a completed soil and site evaluation pursuant to this section shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars ($1,000,000) per claim and that shall remain in force for at least six years after the date on which the improvement permit is approved. The licensed soil scientist shall provide the local health department with evidence satisfactory to the local health department that the coverage required by this section is in force. The local health department shall maintain a register of all licensed soil scientists who work in the county that have submitted completed soil and site evaluations under this section."

Session Laws 2006-136, s. 2(d), provides: "An improvement permit issued pursuant to this section shall include:

"(1) For permits that are valid for five years, a site plan drawn to scale with setbacks labeled. No permits shall be issued that are valid without expiration.

"(2) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.

"(3) The type and layout of the proposed wastewater system and its location.

"(4) The design wastewater flow and characteristics.

"(5) Any proposed landscape, site, drainage, or soil modifications.

"(6) A detailed soil profile description of at least two locations within the proposed disposal area. The detailed soil profile descriptions shall include soil taxonomic classifications, horizons, depth, texture, structure, soil wetness conditions, restrictive horizons, matrix color, and redoximorphic colors.

"(7) Any other information required by the rules of the Commission."

Session Laws 2006-136, s. 2(e), provides: "An improvement permit issued pursuant to this section shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale."

Session Laws 2006-136, s. 2(f), provides: "The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to the Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit, not to exceed five years, and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department of Environment and Natural Resources and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction."

Session Laws 2006-136, s. 2(g), provides:

"When a local health department issues an improvement permit or authorization to construct based upon work performed by a licensed soil scientist pursuant to this section, the improvement permit or authorization to construct shall bear a statement that reads: 'The soil, site, and system evaluation and documentation necessary to issue this ________ (improvement permit or authorization to construct) was performed by ________ (name of licensed soil scientist), a licensed soil scientist, license number ________ (license number).'."

Session Laws 2006-136, s. 2(h), provides: "When a local health department denies an application for an improvement permit or authorization to construct prepared by a licensed soil scientist pursuant to this section, the denial shall include a written report that specifically identifies the provisions of Article 11 of Chapter 130A of the General Statutes or rules adopted pursuant to the Article on which the denial is based."

Session Laws 2006-136, s. 2(i), provides: "A local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct. A licensed soil scientist who reviews a completed application for an improvement permit or authorization to construct under this subsection shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars ($1,000,000) per claim."

Session Laws 2006-136, s. 2(j), provides: "The Department of Environment and Natural Resources shall: (i) specify uniform procedures for the review of an application prepared by a licensed soil scientist; (ii) establish documentation that must be included in the application; (iii) establish the necessary documentation that must be included in the local health department's written permit application review report; and (iv) specify the rights and obligations of each party."

Session Laws 2006-136, s. 2(k), provides: "In addition to any fees authorized under G.S. 130A-39(g), a local board of health may impose an additional fee not to exceed two hundred dollars ($200.00) for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist pursuant to this section."

Session Laws 2006-136, s. 2(*l*), provides: "Except as provided in this section, the provisions of Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to that Article apply to this section. This section applies only to the counties eligible to participate in the pilot program."

Session Laws 2006-136, s. 3, provides: "In order to determine the effectiveness of the pilot program, the Department of Environment and Natural Resources shall evaluate whether: (i) the program resulted in a reduction in the length of time improvement permits or authorizations to construct are pending in the participating counties; (ii) the program resulted in increased system failures or other adverse impacts; and (iii) the program resulted in new or increased environmental impacts. The Department shall annually report its interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission beginning 1 October 2007. The Department shall report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2011."

ARTICLE 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

§ 130A-389. Autopsies.

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report shall be furnished to any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy, unless the deceased's health care power of attorney granted authority for such decisions to the health care agent. If the Chief Medical Examiner or a designated pathologist performs the autopsy at the request of the next of kin, the cost shall be paid by the next of kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 47, s. 2; c. 476, s. 128; 1975, c. 9; 1981, c. 187, s. 7; c. 562, p. 5; 1983, c. 891, s. 2; 1991, c. 463, s. 2; 1998-212, s. 29A.10(a); 2005-351, s. 4; 2005-393, s. 2; 2006-226, s. 32.)

Effect of Amendments. — Session Laws 2005-351, s. 4, as amended by Session Laws 2006-226, s. 32, effective October 1, 2005, and applicable to powers of attorney created on, before, or after that date, substituted "autopsy, unless the deceased's health care power of attorney granted authority for such decisions to the health care agent. If the Chief Medical Examiner or a designated pathologist performs the autopsy at the request of the next of kin, the cost" for "autopsy and the cost" near the end of subsection (b).

Part 2. Autopsies.

§ 130A-398. Limitation on right to perform autopsy.

The right to perform an autopsy shall be limited to those cases in which:

(1) The Chief Medical Examiner or a county medical examiner, acting pursuant to G.S. 130A-389, directs that an autopsy be performed;

(2) The Commission of Anatomy, acting pursuant to G.S. 130A-415, has given written consent for an autopsy to be performed on an unclaimed body;

(3) A prosecuting officer or district attorney, acting pursuant to G.S. 15-7 in case of homicide, directs that an autopsy be performed;

(4) The decedent directs in writing prior to death that an autopsy be performed upon the occurrence of the decedent's death;

(4a) The health care agent under a health care power of attorney with authority to make decisions with respect to autopsies requests that an autopsy be performed upon the deceased principal;

(5) The personal representative of the estate of the decedent requests that an autopsy be performed upon the decedent; or

(6) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual opposition by a member of the same or prior class, authorizes an autopsy to be performed:

a. The spouse;

b. Any adult child or stepchild;

c. Any parent or stepparents;
d. Any adult sibling;
e. A guardian of the person of the decedent at the time of the decedent's death;
f. Any relative or person who accepts responsibility for final disposition of the body by other customary and lawful procedures;
g. Any person under obligation to dispose of the body. (1931, c. 152; 1933, c. 209; 1967, c. 1154, s. 4; 1969, c. 444; 1973, c. 47, s. 2; 1983, c. 891, s. 2; 2005-351, s. 5; 2006-226, s. 32.)

Effect of Amendments. — Session Laws 2005-351, s. 5, as amended by Session Laws 2006-226, s. 32, effective October 1, 2005, and applicable to powers of attorney created on, before, or after that date, added subdivision (4a).

Part 3. Uniform Anatomical Gift Act.

§ 130A-404. Persons who may make an anatomical gift.

(a) An individual of sound mind and 18 years of age or more may give all or any part of that individual's body for any purpose specified in G.S. 130A-405. A gift made in accordance with G.S. 130A-406 shall be sufficient legal authority for procurement without additional authority from the donor or the donor's family or estate. The gift shall take effect upon death. A gift made by the donor in accordance with G.S. 130A-406 may not be revoked upon the donor's death, and neither the donor's family nor the donor's health care agent appointed pursuant to Article 3 of Chapter 32A of the General Statutes may refuse to honor the gift or thwart the procurement of the donation.

(b) If the decedent has not made a gift in the manner prescribed in G.S. 130A-406, then any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in G.S. 130A-405.

(1) The health care agent under a health care power of attorney with authority to make decisions with respect to anatomical gifts;
(2) The spouse;
(3) An adult child;
(4) Either parent;
(5) An adult sibling;
(6) A guardian of the person of the decedent at the time of decedent's death;
(7) Any other person authorized or under obligation to dispose of the body.

(c) The persons authorized by subsection (b) may make the gift after or immediately before death. However, the guardian of the person of a ward may make the gift at any time during the guardianship and the gift shall become effective upon the death of the ward unless the guardianship terminated before death.

(d) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

(e) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(f) The rights of the donee created by the gift are paramount to the rights of others except as provided by G.S. 130A-409(d). (1969, c. 84, s. 1; 1977, c. 166, s. 1; 1983, c. 891, s. 2; 2001-481, s. 2; 2005-351, s. 6; 2006-226, s. 32.)

Effect of Amendments. — Session Laws 2005-351, s. 6, as amended by Session Laws 2006-226, s. 32, effective October 1, 2005, and applicable to powers of attorney created on, before, or after that date, in subsection (b), added present subdivision (1) and redesignated former subdivisions (1) through (6) as present subdivisions (2) through (7).

ARTICLE 18.

Health Assessments for Kindergarten Children in the Public Schools.

§ 130A-440. Health assessment required.

(a) Every child in this State entering kindergarten in the public schools shall receive a health assessment. The health assessment shall be made no more than 12 months prior to the date of school entry. No child shall attend kindergarten unless a health assessment transmittal form, developed pursuant to G.S. 130A-441, indicating that the child has received the health assessment required by this section, is presented to the school principal. The medical provider, or the parent, guardian, or person *in loco parentis*, must present a completed health assessment transmittal form to the principal of the school on or before the child's first day of attendance. If a health assessment transmittal form is not presented on or before the first day, the principal shall present a notice of deficiency to the parent, guardian, or responsible person. The parent, guardian, or responsible person shall have 30 calendar days from the first day of attendance to present the required health assessment transmittal form for the child. Upon termination of 30 calendar days, the principal shall not permit the child to attend the school until the required health assessment transmittal form has been presented.

(b) A health assessment shall include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. Vision screening shall be conducted in accordance with G.S. 130A-440.1. The health assessment may also include dental screening and developmental screening for cognition, language, and motor function.

(c) The health assessment shall be conducted by a physician licensed to practice medicine, a physician's assistant as defined in G.S. 90-18.1(a), a certified nurse practitioner, or a public health nurse meeting the Department's Standards for Early Periodic Screening, Diagnosis, and Treatment Screening.

(d) This Article shall not apply to children entering kindergarten in private church schools, schools of religious charter, or qualified nonpublic schools, regulated by Article 39 of Chapter 115C of the General Statutes. (1985 (Reg. Sess., 1986), c. 1017, s. 1; 1987, c. 114, s. 1; 1989, c. 727, s. 155; 1993, c. 124, s. 1; 1995, c. 123, s. 10; 2006-240, s. 1(b).)

Effect of Amendments. — Session Laws 2006-240, s. 1(b), effective August 13, 2006, added the second sentence in subsection (b).

§ 130A-440.1. Early Childhood Vision Care.

(a) Vision Screening Required for Children Entering Kindergarten. — Every child in this State entering kindergarten in the public schools, beginning with the 2007-2008 school year, shall obtain vision screening in accordance with vision screening standards adopted by the Governor's Commission on Early Childhood Vision Care. Within 180 days of the start of the school year, the parent of the child shall present to the school principal or the principal's designee certification that the child has, within the past 12 months, obtained vision screening conducted by a licensed physician, optometrist, physician assistant, nurse practitioner, registered nurse, orthoptist, or a vision screener certified by Prevent Blindness North Carolina, or a comprehensive eye examination performed by an ophthalmologist or optometrist. The health assessment transmittal form required pursuant to G.S. 130A-440 qualifies as certification that the child has obtained the required vision screening. All providers conducting vision screening shall provide each parent in writing the results of the vision screening on forms bearing the signature of the provider supplied to the provider by the Governor's Commission on Early Childhood Vision Care. The provider shall also orally communicate this information to the parent and shall take reasonable steps to ensure that the parent understands the information communicated. In the instance where a child enters the first grade without having been enrolled in a kindergarten program requiring a vision screening, the requirements for vision screening under this subsection shall apply.

comprehensive eye examination pursuant to the terms of this section not more than six months prior to the date of school entry

(a1) Comprehensive Eye Examination. — For children who receive and fail to pass a vision screening as required under subsection (a) of this section, a comprehensive eye examination is required. If a public school teacher, administrator, or other appropriate school personnel has reason to believe that a child enrolled in kindergarten through third grade is having problems with vision, the school personnel may recommend to the child's parent that the child have a comprehensive eye examination. Notification to the parent shall also inform the parent that funds may be available from the Governor's Commission on Early Childhood Vision Care to pay providers for the examination, including corrective lenses.

The comprehensive eye examination shall be conducted by a duly licensed optometrist or ophthalmologist. The comprehensive eye examination conducted pursuant to this section shall consist of a complete and thorough examination of the eye and shall include:

(1) Measurement of visual acuity;
(2) Ocular alignment and motility;
(3) Depth perception — stereopsis;
(4) Fusion;
(5) Slit lamp examination of the lid margins, conjunctivae, cornea, anterior chamber, iris, and crystalline lens;
(6) Examination of the ocular adnexa, the anterior segment, and pupils; and
(7) Cycloplegic refraction and dilated fundus examination.

Health assessment vision screening under G.S. 130A-440 is not a comprehensive eye examination for purposes of this section.

(b) Repealed by Session Laws 2006-240, s. 1(a), effective August 13, 2006.

(c) The results of a comprehensive eye examination conducted under this section shall be included on the comprehensive eye examination transmittal form developed by the Commission pursuant to G.S. 143B-216.75 and shall contain a summary of the comprehensive eye examination performed by the optometrist or ophthalmologist. Any treatment recommendations by the optometrist or ophthalmologist, such as spectacles for schoolwork, shall appear in the summary and school health card. The provider shall present a signed transmittal form to the parent upon completion of the examination. The parent shall submit the transmittal form to the school in accordance with this section.

(d) Repealed by Session Laws 2006-240, s. 1(a), effective August 13, 2006.

(e) G.S. 130A-441, 130A-442, and 130A-443, pertaining to health assessments, apply to comprehensive eye examinations required under this section.

(f) No child shall be excluded from attending school for a parent's failure to obtain a comprehensive eye examination required under this section. If a parent fails or refuses to obtain a comprehensive eye examination or to provide the certification of a comprehensive eye examination, the school shall send a written reminder to the parent of required eye examinations and shall include information about funds that may be available from the Governor's Commission on Early Childhood Vision Care.

(g) In adopting standards for vision screening under this section and as required under G.S. 130A-440, the Commission shall take into account the resources necessary to comply with the standards and, if standards will require additional resources, shall mitigate the impact on resources without compromising vision screening effectiveness.

(h) As used in this section, the term "parent" means the parent, guardian, or person standing in loco parentis. (2005-276, s. 10.59F(g); 2005-345, s. 20(d); 2006-240, s. 1(a).)

Editor's Note. —

The section above was amended by Session Laws 2006-240, s. 1(a), in the coded bill drafting format provided by G.S. 120-20.1. Subsection (a) is set out in the form above at the direction of the Revisor of Statutes. The text at the end of subsection (a) was part of the first sentence of subsection (a) as it existed prior to the 2006 amendment, but was omitted by Session Laws 2006-240, and consequently not stricken through.

Session Laws 2006-240, s. 6, provides: "Children who have received vision screenings prior to the availability of forms developed by the Governor's Commission on Early Childhood Vision Care in accordance with G.S. 130A-440.1 shall be deemed to have obtained the screening required under G.S. 130A-440.1, as amended by this act."

Effect of Amendments. — Session Laws 2006-240, s. 1(a), effective August 13, 2006, substituted "Early Childhood Vision Care" for "Comprehensive eye examination required" in the section catchline and rewrote this section.

ARTICLE 21.

Advance Health Care Directive Registry.

§ 130A-470. Fees for using the registry; other funds for the registry.

(a) The Secretary of State shall charge a fee of ten dollars ($10.00) for filing a document, other than a revocation, with the registry. The Secretary of State shall not charge a fee for filing a revocation with the registry. The fee shall be applied to the cost of maintaining the registry and to promoting public education and awareness of the registry.

(b) The Secretary of State, on behalf of the State, may accept gifts, donations, bequests, and other forms of voluntary contributions; may apply for grants from public and private sources; and may expend funds received under this subsection for the purpose of promoting public education and awareness of the registry.

(c) **(Effective until July 1, 2007)** All fees, funds, and gifts received pursuant to this section shall be subject to audit by the State Auditor and shall be expended in conformity with Article 1 of Chapter 143 of the General Statutes.

(c) **(Effective July 1, 2007)** All fees, funds, and gifts received pursuant to this section shall be subject to audit by the State Auditor and shall be expended in conformity with Chapter 143C of the General Statutes. (2001-455, s. 1; 2001-513, s. 30(b); 2006-203, s. 70.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 2007. The second version of subsection (c) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s.

126, provides in part: "Prosecutions for offenses committed before the effective date of this act [July 1, 2007] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 70, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "Chapter 143C" for "Article 1 of Chapter 143" in subsection (c).

ARTICLE 22.

A Terrorist Incident Using Nuclear, Biological, or Chemical Agents.

§ 130A-480. Emergency department data reporting.

(a) For the purpose of ensuring the protection of the public health, the State Health Director shall develop a syndromic surveillance program for hospital emergency departments in order to detect and investigate public health threats that may result from (i) a terrorist incident using nuclear, biological, or chemical agents or (ii) an epidemic or infectious, communicable, or other disease. The State Health Director shall specify the data to be reported by hospitals pursuant to this program, subject to the following:

(1) Each hospital shall submit electronically available emergency department data as specified by rule by the Commission. The Commission, in consultation with hospitals, shall establish by rule a schedule for the implementation of full electronic reporting capability of all data elements by all hospitals. The schedule shall take into consideration the number of data elements already reported by the hospital, the hospital's capacity to electronically maintain the remaining elements, available funding, and other relevant factors.

(2) None of the following data for patients or their relatives, employers, or household members may be collected by the State Health Director: names; postal or street address information, other than town or city, county, state, and the first five digits of the zip code; geocode information; telephone numbers; fax numbers; electronic mail addresses; social security numbers; health plan beneficiary numbers; account numbers; certificate or license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web universal resource locators (URLs); Internet protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

(b) The following are not public records under Chapter 132 of the General Statutes and are privileged and confidential:

(1) Data reported to the State Health Director pursuant to this section.

(2) Data collected or maintained by any entity with whom the State Health Director contracts for the reporting, collection, or analysis of data pursuant to this section.

The State Health Director shall maintain the confidentiality of the data reported pursuant to this section and shall ensure that adequate measures are taken to provide system security for all data and information. The State Health Director may share data with local health departments for public health purposes, and the local health departments are bound by the confidentiality provisions of this section. The State Health Director shall not allow information that it receives pursuant to this section to be used for commercial purposes and shall not release data except as authorized by other provisions of law.

(c) A person is immune from liability for actions arising from the required submission of data under this Article.

(d) For purposes of this section, "hospital" means a hospital, as defined in G.S. 131E-214.1(3), that operates an emergency room on a 24-hour basis. The term does not include a psychiatric hospital that operates an emergency room.

(e) Administrative emergency department data shall be reported by hospitals under Article 11A of Chapter 131E of the General Statutes. (2004-124, s. 10.34(b); 2006-264, s. 64(a).)

Effect of Amendments. — Session Laws 2006-264, s. 64(a), effective August 27, 2006, substituted "that operates an emergency room" for "subject to Article 2 of Chapter 122C of the General Statutes" at the end of subsection (d).

§ 130A-481. Food defense.

The Department of Agriculture and Consumer Services, Department of Environment and Natural Resources, and Department of Health and Human Services shall jointly develop a plan to protect the food supply from intentional contamination. The plan shall address protection of the food supply from production to consumption, including, but not limited to, the protection of plants, crops, and livestock. (2006-80, s. 2.)

Editor's Note. — Session Laws 2006-80, s. 3, made this section effective July 10, 2006.

Chapter 131A.

Health Care Facilities Finance Act.

Sec.
131A-19. (Effective July 1, 2007) Annual report.

§ 131A-19. (Effective July 1, 2007) Annual report.

The Commission shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Chapter for the preceding year to the Governor, the State Auditor, the Secretary of Health and Human Services, the General Assembly, and the Local Government Commission. The Commission shall cause an audit of its books and accounts relating to its activities under this Chapter to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Commission. (1975, c. 766, s. 1; 1997-443, s. 11A.118(a); 2006-203, s. 71.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act [July 1, 2007] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 71, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "the Advisory Budget Commission" following "the General Assembly" in the first sentence.

Chapter 131D.

Inspection and Licensing of Facilities.

Article 3.

Adult Care Home Residents' Bill of Rights.

Sec.
131D-21.2. Quality assurance, medical, or peer review committees.

ARTICLE 1.

Licensing of Facilities.

§ 131D-2. Licensing of adult care homes for the aged and disabled.

Editor's Note. —

Session Laws 2005-276, s. 10.40A(p), effective July 1, 2005, as amended by Session Laws 2006-66, s. 10.1, provides: "The Department's Division of Aging and Adult Services shall develop a Quality Improvement Consultation Program for Adult Care Homes. The purpose of the Program is to promote better care and improve quality of life in a safe environment for residents in adult care homes through consultation and assistance with adult care home providers. The county departments of social services shall be responsible for implementation of the Program with all adult care homes located in the respective county, based on a timetable for statewide implementation.

"The Division of Aging and Adult Services shall consult with adult care home providers, county departments of social services, consumer advocates, and other interested stakeholders and parties in the development of the Quality Improvement Consultation Program for Adult Care Homes.

"The Department shall submit a progress report to the North Carolina Study Commission on Aging and to the Senate Appropriations Committee on Health and Human Services and to the House of Representatives Subcommittee on Health and Human Services on or before January 1, 2007.

"The report will address the following topics:

"(1) Principles and philosophies that are resident-centered and promote independence, dignity, and choice for residents;

"(2) Approaches to develop continuous quality improvement with a focus on resident satisfaction and optimal outcomes;

"(3) Dissemination of best practice models that have been used successfully elsewhere;

"(4) A determination of the availability of standardized instruments, and their use to the extent possible, to assess and measure adult care home performance according to quality of life indicators;

"(5) Utilization of quality improvement plans for adult care homes that identify and resolve issues that adversely affect quality of care and services to residents. The plans include agreed upon time frames for completion of improvements and identification of needed resources;

"(6) Training required to equip county departments of social services' staff to implement the Program;

"(7) A distinction of roles between the regulatory role of the Department's Division of Facility Services and the quality improvement consultation and monitoring responsibilities of the county departments of social services; and

"(8) Identification of staffing and other resources needed to implement the Program.

"The Division of Aging and Adult Services shall conduct a pilot of the Quality Improvement Consultation Program for Adult Care Homes. No more than four county departments of social services shall participate in the pilot. The Division of Aging and Adult Services shall consider geographic balance and size in carrying out the pilot. At the conclusion of the pilot, the Division of Aging and Adult Services shall make recommendations regarding the effectiveness of the Quality Improvement Consultation Program for Adult Care Homes. If the Division recommends expansion of the pilot to other counties or statewide implementation of the Program, its report shall include the cost and a proposed timetable for implementing these recommendations, including the identification of any necessary statutory and administrative rule changes. The recommendations shall be made to the Secretary of the Department of Health and Human Services, the North

Carolina Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 131D-6. Certification of adult day care programs; purpose; definition; penalty.

Editor's Note. —

Session Laws 2006-108, s. 1(a), provides: "The Department of Health and Human Services, Division of Aging and Adult Services and the Division of Medical Assistance, shall provide education, and training if necessary, to ensure that Community Alternatives Program (CAP) case managers are aware of adult day health services and that this option is being considered in all situations appropriate for the client."

Session Laws 2006-108, s. 1(b), provides: "The Department of Health and Human Services, Division of Aging and Adult Services, shall report on the status of the Partners in Caregiving Study recommendations."

Session Laws 2006-108, s. 1(c), provides: "The Department shall report the status of its activities under this section to the North Carolina Study Commission on Aging not later than July 30, 2006."

Article 1A.

Control over Child Placing and Child Care.

§ 131D-10.2. Definitions.

CASE NOTES

"Foster Care." — Trial court's custody review order did not comply with G.S. 7B-906(c)(3) and (4) because it did not address the goals of a child's foster care placement or the role her foster parents were to play in her future planning, because the foster parents were foster parents, as they were providing foster care, as defined by G.S. 131D-10.2(9). In re L.L., 172 N.C. App. 689, 616 S.E.2d 392, 2005 N.C. App. LEXIS 1798 (2005).

Article 2.

Local Confinement Facilities.

§ 131D-11. Inspection.

CASE NOTES

Cited in Multiple Claimants v. N.C. HHS, Div. of Facility and Detention Servs., — N.C. App. —, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006).

§ 131D-13. Failure to provide information.

CASE NOTES

Cited in Multiple Claimants v. N.C. HHS, Div. of Facility and Detention Servs., — N.C. App. —, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006).

Article 3.

Adult Care Home Residents' Bill of Rights.

§ 131D-19. Legislative intent.

Editor's Note. — Session Laws 2005-276, s. 10.40A(p), effective July 1, 2005, as amended by Session Laws 2006-66, s. 10.1, provides: "The Department's Division of Aging and Adult Services shall develop a Quality Improvement Consultation Program for Adult Care Homes. The purpose of the Program is to promote better care and improve quality of life in a safe environment for residents in adult care homes through consultation and assistance with adult care home providers. The county departments of social services shall be responsible for implementation of the Program with all adult care homes located in the respective county, based on a timetable for statewide implementation.

"The Division of Aging and Adult Services shall consult with adult care home providers, county departments of social services, consumer advocates, and other interested stakeholders and parties in the development of the Quality Improvement Consultation Program for Adult Care Homes.

"The Department shall submit a progress report to the North Carolina Study Commission on Aging and to the Senate Appropriations Committee on Health and Human Services and to the House of Representatives Subcommittee on Health and Human Services on or before January 1, 2007.

"The report will address the following topics:

"(1) Principles and philosophies that are resident-centered and promote independence, dignity, and choice for residents;

"(2) Approaches to develop continuous quality improvement with a focus on resident satisfaction and optimal outcomes;

"(3) Dissemination of best practice models that have been used successfully elsewhere;

"(4) A determination of the availability of standardized instruments, and their use to the extent possible, to assess and measure adult care home performance according to quality of life indicators;

"(5) Utilization of quality improvement plans for adult care homes that identify and resolve issues that adversely affect quality of care and services to residents. The plans include agreed upon time frames for completion of improvements and identification of needed resources;

"(6) Training required to equip county departments of social services' staff to implement the Program;

"(7) A distinction of roles between the regulatory role of the Department's Division of Facility Services and the quality improvement consultation and monitoring responsibilities of the county departments of social services; and

"(8) Identification of staffing and other resources needed to implement the Program.

"The Division of Aging and Adult Services shall conduct a pilot of the Quality Improvement Consultation Program for Adult Care Homes. No more than four county departments of social services shall participate in the pilot. The Division of Aging and Adult Services shall consider geographic balance and size in carrying out the pilot. At the conclusion of the pilot, the Division of Aging and Adult Services shall make recommendations regarding the effectiveness of the Quality Improvement Consultation Program for Adult Care Homes. If the Division recommends expansion of the pilot to other counties or statewide implementation of the Program, its report shall include the cost and a proposed timetable for implementing these recommendations, including the identification of any necessary statutory and administrative rule changes. The recommendations shall be made to the Secretary of the Department of Health and Human Services, the North Carolina Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 131D-21.2. Quality assurance, medical, or peer review committees.

(a) A member of a duly appointed quality assurance, medical, or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131D-21.1.

(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against an adult care home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings. (2004-149, s. 2.3; 2006-264, s. 65.)

Effect of Amendments. — Session Laws 2006-264, s. 65, effective August 27, 2006, substituted "an adult care" for "a nursing" in the first sentence of subsection (b).

ARTICLE 4.

Temporary Management of Adult Care Homes.

§ 131D-35. Temporary management of adult care homes.

Editor's Note. —

Session Laws 2005-276, s. 10.40A(p), effective July 1, 2005, as amended by Session Laws 2006-66, s. 10.1, provides: "The Department's Division of Aging and Adult Services shall develop a Quality Improvement Consultation Program for Adult Care Homes. The purpose of the Program is to promote better care and improve quality of life in a safe environment for residents in adult care homes through consultation and assistance with adult care home providers. The county departments of social services shall be responsible for implementation of the Program with all adult care homes located in the respective county, based on a timetable for statewide implementation.

"The Division of Aging and Adult Services shall consult with adult care home providers, county departments of social services, consumer advocates, and other interested stakeholders and parties in the development of the Quality Improvement Consultation Program for Adult Care Homes.

"The Department shall submit a progress report to the North Carolina Study Commission on Aging and to the Senate Appropriations Committee on Health and Human Services and to the House of Representatives Subcommittee on Health and Human Services on or before January 1, 2007.

"The report will address the following topics:

"(1) Principles and philosophies that are resident-centered and promote independence, dignity, and choice for residents;

"(2) Approaches to develop continuous quality improvement with a focus on resident satisfaction and optimal outcomes;

"(3) Dissemination of best practice models that have been used successfully elsewhere;

"(4) A determination of the availability of standardized instruments, and their use to the extent possible, to assess and measure adult care home performance according to quality of life indicators;

"(5) Utilization of quality improvement plans for adult care homes that identify and resolve issues that adversely affect quality of care and services to residents. The plans include agreed upon time frames for completion of improvements and identification of needed resources;

"(6) Training required to equip county departments of social services' staff to implement the Program;

"(7) A distinction of roles between the regulatory role of the Department's Division of Facility Services and the quality improvement consultation and monitoring responsibilities of the county departments of social services; and

"(8) Identification of staffing and other resources needed to implement the Program.

"The Division of Aging and Adult Services shall conduct a pilot of the Quality Improvement Consultation Program for Adult Care Homes. No more than four county departments of social services shall participate in the pilot. The Division of Aging and Adult Services shall consider geographic balance and size in carrying out the pilot. At the conclusion of the pilot, the Division of Aging and Adult Services shall make recommendations regarding the effectiveness of the Quality Improvement Consultation Program for Adult Care Homes. If the Division recommends expansion of the pilot to other counties or statewide implementation of the Program, its report shall include the cost and a proposed timetable for implementing these recommendations, including the identification of any necessary statutory and administrative rule changes. The recommendations shall be made to the Secretary of the Department of Health and Human Services, the North Carolina Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Chapter 131E.

Health Care Facilities and Services.

Article 2.

Public Hospitals.

Part 1. Municipal Hospitals.

Sec.
131E-14.2. Conflict of interest.

Article 5.

Hospital Licensure Act.

Part 3. Hospital Privileges.

131E-87. Reports of disciplinary action; immunity from liability.

Part 5. Medical Review Committee.

131E-95. Medical review committee.

Article 6.

Health Care Facility Licensure Act.

Part 5. Nursing Pool Licensure Act.

Sec.
131E-154.9 through 131E-154.11. [Reserved.]

Part 6. North Carolina New Organizational Vision Award (NC NOVA) Special Licensure Designation.

131E-154.12. Title; purpose.
131E-154.13. Definitions.
131E-154.14. NC NOVA program established.

Article 16.

Miscellaneous Provisions.

131E-267. Fees for departmental review of health care facility construction projects.

ARTICLE 2.

Public Hospitals.

Part 1. Municipal Hospitals.

§ 131E-14.2. Conflict of interest.

(a) No member of the board of directors or employee of a public hospital, as defined in G.S. 159-39(a), or that person's spouse shall do either of the following:

(1) Acquire any interest, direct or indirect, in any hospital facility or in any property included or planned to be included in a hospital facility.

(2) Have any direct interest in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility, except an employment contract for an employee. This restriction shall not apply to any contract, undertaking, or other transaction with a bank or banking institution, savings and loan association or public utility in the regular course of its business provided that the contract, undertaking, or other transaction shall be authorized by the board by specific resolution on which no director having direct interest shall vote.

(b) The fact that a person or that person's spouse owns ten percent (10%) or less stock of a corporation or has a ten percent (10%) or less ownership in any other business entity or is an employee of that corporation or other business entity does not make the person have a "direct interest" as this phrase is used in subsection (a) of this section; provided that, in order for the exception to apply, the contract, undertaking, or other transaction shall be authorized by the board of directors by specific resolution on which no director or employee having an interest, direct or indirect, shall vote.

(c) If a member of the board of directors or an employee of a public hospital or that person's spouse owns or controls an interest, direct or indirect, in any property included or planned to be included in any hospital facility, the member of the board of directors or the employee shall immediately disclose the same in writing to the board and the disclosure shall be entered upon the minutes of the board. Failure to disclose shall constitute misconduct in office and shall be grounds for removal.

(c1) Subsection (a) of this section shall not apply if the director or employee is not involved in making or administering the contract. A director or employee is involved in administering a contract if the director or employee oversees the performance of or interprets the contract. A director or employee is involved in making a contract if the director or employee participates in the development of specifications or terms or in the preparation or award of the contract. A director or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract. A director is also involved in making a contract if the board of directors takes action on the contract, whether or not the director actually participates in that action, unless the contract is approved under an exception to this section under which the director is allowed to benefit and is prohibited from voting.

(d) Subsection (a) of this section shall not apply to any member of the board of directors of a public hospital if (i) the undertaking or contract or series of undertakings or contracts between the public hospital and one of its officials is approved by specific resolution of the board adopted in an open and public meeting and recorded in its minutes; (ii) the official entering into the contract or undertaking with the public hospital does not in an official capacity participate in any way or vote; and (iii) the amount does not exceed twelve thousand five hundred dollars ($12,500) for medically related services and twenty-five thousand dollars ($25,000) for other goods or services within a 12-month period, or the contract is for medically related or administrative services that are provided by a director who serves on the board as an ex officio representative of the hospital medical staff pursuant to a hospital bylaw adopted prior to January 1, 2005, or that are provided by the spouse of that director.

(e) Subsection (a) of this section shall not apply to any employment relationship between a public hospital and the spouse of a member of the board of directors of the public hospital.

(f) A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved as provided in this subsection. A public hospital that is a party to the contract may request approval to continue contracts under this subsection from the chairman of the Local Government Commission. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare. (2001-409, s. 6; 2005-70, s. 1; 2006-264, s. 64(b).)

Effect of Amendments. — Session Laws 2006-264, s. 64(b), effective August 27, 2006, inserted "or administrative" and made a minor punctuation change in clause (iii) in subsection (d).

Part 2. Hospital Authority.

§ 131E-15. Title and purpose.

CASE NOTES

Cited in Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

§ 131E-17. Creation of a hospital authority.

CASE NOTES

Cited in Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

Article 5.

Hospital Licensure Act.

Part 1. Article Title and Definitions.

§ 131E-76. Definitions.

CASE NOTES

Applied in Armstrong v. Barnes, 171 N.C. App. 287, 614 S.E.2d 371, 2005 N.C. App. LEXIS 1262 (2005), cert. denied, 360 N.C. 60, 621 S.E.2d 173 (2005).

Part 2. Hospital Licensure.

§ 131E-77. Licensure requirement.

CASE NOTES

Requirement to Exhaust Administrative Remedies. — Trial court properly dismissed appeal by hospital joint venture and a town from denial of a certificate of need to construct a new hospital under the exemption provisions of G.S. 131E-184(a); the equal protection claim under N.C. Const. art. I, § 19 and U.S. Const. amend. XIV was properly dismissed as it failed to state a claim upon which relief could be granted in that it failed to allege the lack of a rational basis. Good Hope Hosp., Inc. v. N.C. HHS, 174 N.C. App. 266, 620 S.E.2d 873, 2005 N.C. App. LEXIS 2399 (2005).

§ 131E-78. Adverse action on a license.

CASE NOTES

Exhaustion of Administrative Remedies. — Trial court properly dismissed the constitutional claims, under 42 U.S.C.S. § 1983, after it dismissed the appeal from denial of an application to build a new hospital because the plaintiffs, a town and a joint venture, failed to exhaust their administrative remedies by pursuing an administrative review hearing as provided by G.S. 131E-78(b)(1). Good Hope Hosp., Inc. v. N.C. HHS, 174 N.C. App. 266, 620 S.E.2d 873, 2005 N.C. App. LEXIS 2399 (2005).

Part 3. Hospital Privileges.

§ 131E-85. Hospital privileges and procedures.

CASE NOTES

Suspension Upheld. — Where the doctor's medical staff privileges were suspended due to the doctor's failure to obtain a patient's consent prior to scheduling a consultation for amputation of the patient's leg and the doctor's failure to communicate with a patient's primary physician upon changing the patient's code status, the hospital's corrective action against the doctor did not violate G.S. 131E-85. Lohrmann v. Iredell Mem'l Hosp., Inc., 174 N.C. App. 63, 620 S.E.2d 258, 2005 N.C. App. LEXIS 2287 (2005).

§ 131E-87. Reports of disciplinary action; immunity from liability.

The chief administrative officer of each licensed hospital in the State shall report to the appropriate occupational licensing board the details, as prescribed by the board, of any revocation, suspension, limitation, or voluntary reduction of privileges of a health care provider to practice in that hospital. Each hospital shall also report to the board its medical staff resignations. Reports concerning physician privileges and resignations shall be made in accordance with G.S. 90-14.13. Any person making a report required by this section shall be immune from any resulting criminal prosecution or civil liability unless the person knew the report was false or acted in reckless disregard of whether the report was false. (1983, c. 775, s. 1; 1987, c. 859, s. 16; 2006-144, s. 9.)

Effect of Amendments. — Session Laws 2006-144, s. 9, effective October 1, 2006, substituted "limitation, or voluntary reduction" for "or limitation" in the first sentence; and added the third sentence.

Part 5. Medical Review Committee.

§ 131E-95. Medical review committee.

(a) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(b) The proceedings of a medical review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "'Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against a hospital, an ambulatory surgical facility licensed under Chapter 131E of the General Statutes, or a provider of professional health services which results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings.

(c) Information that is confidential and is not subject to discovery or use in civil actions under this section may be released to a professional standards review organization that performs any accreditation or certification including the Joint Commission on Accreditation of Healthcare Organizations, or to a patient safety organization or its designated contractors. Information released under this subsection shall be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification, or the patient safety organization's or its contractors' analysis of patient safety and health care quality. Information released under this subsection retains its confidentiality and is not subject to discovery or use in any civil actions as provided under this section, and the standards review or patient safety organization shall keep the information confidential subject to this section, except as necessary to carry out the organization's patient safety, accreditation, or certification activities. For the purposes of this section, "patient safety organization" means an entity that collects and analyzes patient safety or health care quality data of providers for the purpose of improving patient safety and the quality of health care delivery and includes, but is not limited to, an entity formed pursuant to Public Law No. 109-41. (1973, c. 1111; 1981, c. 725; 1983, c. 775, s. 1; 1999-222, s. 2; 2002-179, s. 19; 2004-149, s. 2.5; 2006-144, s. 3.2.)

Effect of Amendments. — Session Laws 2006-144, s. 3.2, effective July 19, 2006, in subsection (c), added "or to a patient safety organization or its designated contractors" at the end of the first sentence, added "or the patient safety organization's or its contractors' analysis of patient safety and health care quality" at the end of the second sentence, inserted "or patient safety" in the third sentence, added "except as necessary to carry out the organization's patient safety, accreditation, or certification activities" at the end of the fourth sentence, and added the last sentence.

CASE NOTES

Presentation to Review Committee Does Not Render Information Immune. — Physician, as an original source, could not invoke G.S. 131E-95(b) and G.S. 90-21.22A(c) to shield himself from answering deposition questions during a malpractice suit regarding the details of his drug abuse merely because he disclosed those details during credentialing committee proceedings and the details were presumably included in the committee's records. Armstrong v. Barnes, 171 N.C. App. 287, 614 S.E.2d 371, 2005 N.C. App. LEXIS 1262 (2005), cert. denied, 360 N.C. 60, 621 S.E.2d 173 (2005).

Immunity Does Not Extend to Allegations of Malice. — In doctor's lawsuit alleging racial discrimination under 42 U.S.C.S. § 1981, members of a hospital medical executive committee were not entitled to immunity under the North Carolina Hospital Licensure Act, G.S. 131E-95(a), because the doctor alleged that their actions were willful and malicious, and the statutory immunity only extended to actions without malice. Mbadiwe v. Union Mem. Reg'l Med. Ctr., Inc., — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 31674 (W.D.N.C. Nov. 28, 2005).

Part 7. Confidential Information.

§ 131E-97.1. Confidentiality of personnel information.

CASE NOTES

Cited in Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

§ 131E-97.2. Confidentiality of credentialing information.

CASE NOTES

Information not immune from discovery. — Physician could not invoke the G.S. 131E-97.2 privilege to shield himself from answering deposition questions during a malpractice suit regarding the details of his drug abuse as the privilege was inapplicable because the physician was not acting on behalf of the hospital in connection with a credentialing committee's review; the physician did not acquire knowledge of the details of his drug abuse through the credentialing committee's proceedings. Armstrong v. Barnes, 171 N.C. App. 287, 614 S.E.2d 371, 2005 N.C. App. LEXIS 1262 (2005), cert. denied, 360 N.C. 60, 621 S.E.2d 173 (2005).

§ 131E-97.3. Confidentiality of competitive health care information.

CASE NOTES

Contract to Buy Practice Not Competitive Health Care Information. — Because nothing suggested that other hospitals or entities were competing for a doctor's medical practice or that a medical center's contract to buy the doctor's practice contained "financial terms" or health care information directly related to financial terms, the contract was not confidential as "competitive health care information" pursuant to G.S. 131E-97.3. Carter-Hubbard Publ'g Co. v. WRMC Hosp. Operating Corp., — N.C. App. —, 633 S.E.2d 682, 2006 N.C. App. LEXIS 1653 (2006).

§ 131E-99. Confidentiality of health care contracts.

CASE NOTES

Contract to Buy Practice Not Competitive Health Care Information. — Because nothing suggested that other hospitals or entities were competing for a doctor's medical practice or that a medical center's contract to buy the doctor's practice contained "financial terms" or health care information directly related to financial terms, the contract was not confidential as "competitive health care information" pursuant to G.S. 131E-97.3. Carter-Hubbard Publ'g Co. v. WRMC Hosp. Operating Corp., — N.C. App. —, 633 S.E.2d 682, 2006 N.C. App. LEXIS 1653 (2006).

Article 6.

Health Care Facility Licensure Act.

Part 1. Nursing Home Licensure Act.

§ 131E-107. Quality assurance, medical, or peer review committees.

CASE NOTES

Peer Review Reports. — G.S. 90-21.22A did not provide privilege protection to nursing homes; 2003 version of G.S. 131E-107 applied to nursing homes, but did not provide privilege from discovery for materials produced by peer review committees, so a trial court did not err in holding that nursing home peer review reports were not privileged. Windman v. Britthaven, Inc., 173 N.C. App. 630, 619 S.E.2d 522, 2005 N.C. App. LEXIS 2113 (2005).

Part 3. Home Care Agency Licensure Act.

§ 131E-135. Title; purpose.

Editor's Note. — Session Laws 2006-194, s. 1, provides: "The Department of Health and Human Services, Division of Medical Assistance, shall implement a pilot program to evaluate the use of telemonitoring equipment in home and community based services. As determined by the Division, the Department shall provide remuneration to home care agencies and other providers for participation in the pilot program. The pilot program shall be implemented by October 1, 2006, and shall evaluate the use of telemonitoring equipment as a tool to improve the health of home and community based recipients through increased monitoring and responsiveness, and resulting in increased stabilization rates and decreased hospitalization rates. The evaluation must include a representative number of older adults. The Department shall report to the Study Commission on Aging by August 1, 2007. The report shall include findings and recommendations on the cost-effectiveness of telemonitoring and the benefits to individuals and health care providers." Session Laws 2006-66, s. 10.9C authorized a similar study.

Session Laws 2006-194, s. 2, provides: "Beginning January 1, 2007, and for a period of one year thereafter, the Department of Health and Human Services shall not issue any licenses for new home care agencies that intend to offer in-home aide services. This shall not restrict the Department from issuing licenses to certified home health agencies that intend to offer in-home aide services or to agencies that need a new license for an existing home care agency being acquired. This will allow the Department the time necessary to implement newly adopted home care rules."

Part 5. Nursing Pool Licensure Act.

§§ 131E-154.9 through 131E-154.11: Reserved for future codification purposes.

Part 6. North Carolina New Organizational Vision Award (NC NOVA) Special Licensure Designation.

§ 131E-154.12. Title; purpose.

(a) This Part shall be known as the "North Carolina New Organizational Vision Award (NC NOVA) Special Licensure Designation."

(b) The purpose of this Part is to establish special licensure designation requirements for nursing homes and home care agencies licensed pursuant to this Chapter and adult care homes licensed pursuant to Article 1 of Chapter 131D of the General Statutes. Application for the Special Licensure Designation is voluntary. (2006-104, s. 1.)

Editor's Note. — The preamble to Session Laws 2006-104, provides: "Whereas, 'direct care workers' is a nationally recognized term referring to those paraprofessionals that are employed as nurse aides, personal care aides, personal care attendants, home health aides, in-home aides, habilitation aides, and other assistive personnel who provide hands-on care; and

"Whereas, direct care workers are essential to the provision of care and an enhanced quality of life for long-term care consumers, whether they are receiving services provided in a home or community setting, or in a residential or institutional setting; and

"Whereas, North Carolina, like many states, is experiencing shortages of direct care workers; and

"Whereas, the need to attract and retain greater numbers of employees within this occupational category will continue for the foreseeable future; and

"Whereas, a well-qualified, satisfied, stable, and adequate supply of direct care workers is a shared concern for employers, employees, consumers, families, and private and public payors of long-term care services received in home care agencies, adult care homes, and nursing facilities; and

"Whereas, long-term care trade associations, providers, direct care workers, consumer advocacy organizations, researchers, the Department of Health and Human Services, and The Carolinas Center for Medical Excellence have worked together to develop a voluntary and comprehensive workplace culture change program known as the North Carolina New Organizational Vision Award (NC NOVA) to address known causes of direct care turnover for the purpose of improving the adequacy, stability, satisfaction, and quality of the direct care work; and

"Whereas, NC NOVA has been identified as a potential national model for replication to improve direct care workforce retention through a comprehensive and voluntary workplace culture program by the Institute for the Future of Aging Services, the program office for the national Better Jobs Better Care initiative funded by the Robert Wood Johnson Foundation, and The Atlantic Philanthropies; Now, therefore, The General Assembly of North Carolina enacts:"

Session Laws 2006-104, s. 2(a), provides: "In order to ensure continuity during the initial statewide implementation phase of NC NOVA, The Carolinas Center for Medical Excellence shall be designated as the independent review organization for NC NOVA through December 31, 2010. Beginning in 2009, the Division of Facility Services, with approval from the NC NOVA Partner Team, shall implement a competitive bid process to determine an independent review organization for a minimum of five years beginning in 2011."

Session Laws 2006-104, s. 2(b), provides: "During the period of January 1, 2007, through December 31, 2010, in the event The Carolinas Center for Medical Excellence determines it cannot continue conducting independent reviews, The Carolinas Center for Medical Excellence shall provide the Partner Team with a 12-month written notice of such intent in order to ensure sufficient transition time to select another independent review entity without any disruption of the NC NOVA program."

Session Laws 2006-104, s. 3, made this part effective January 1, 2007.

§ 131E-154.13. Definitions.

The following definitions apply in this Part, unless otherwise specified:

(1) Independent Review Organization. — The organization responsible for the application, review, and determination process for NC NOVA designation.

(2) North Carolina New Organizational Vision Award (NC NOVA). — A special licensure designation for home care agencies and nursing homes licensed pursuant to this Chapter, and adult care homes licensed pursuant to Article 1 of Chapter 131D of the General Statutes, that have been determined through written and on-site review by an independent review organization to have met a comprehensive set of workplace related interventions intended to improve the recruitment and retention, quality, and job satisfaction of direct care staff and the care provided to long-term care clients and residents.

(3) NC NOVA Partner Team. — The entity responsible for developing the criteria and protocols for the NC NOVA special licensure designation. The Partner Team is inclusive of representatives from the following organizations: Association for Home and Hospice Care of North Carolina, Direct Care Workers Association of North Carolina, Duke University Gerontological Nursing Program, Friends of Residents in Long Term Care, North Carolina Assisted Living Association, North Carolina Association of Long Term Care Facilities, North Carolina Association of Non-Profit Homes for the Aging, North Carolina Department of Health and Human Services, North Carolina Foundation for Advanced Health Programs, North Carolina Health Care Facilities Association, The Carolinas Center for Medical Excellence, and the University of North Carolina at Chapel Hill — Institute on Aging.

(4) NC NOVA Provider Information Manual. — The document developed by the NC NOVA Partner Team that specifies the scope of criteria for NC NOVA designation as well as information and procedures pertaining to the application, review, determination, and termination process. (2006-104, s. 1.)

§ 131E-154.14. NC NOVA program established.

(a) The Department of Health and Human Services shall establish the NC NOVA program.

(b) The Department shall adopt rules to implement the NC NOVA program in accordance with the criteria and protocols established by the NC NOVA Partner Team and detailed in the NC NOVA Provider Information Manual.

(c) Any information submitted by applicants or obtained by the independent review organization related to NC NOVA, as well as annual turnover data voluntarily submitted by home care agencies, adult care homes, and nursing facilities for the purposes of assessing statewide turnover trends, shall not be considered a public record under G.S. 132-1.

(d) Any licensed home care agency, adult care home, or nursing home that is determined not to have met the criteria for NC NOVA designation may reapply at intervals specified by the NC NOVA Partner Team and detailed in the NC NOVA Provider Information Manual.

(e) The Department of Health and Human Services, Division of Facility Services, shall issue a NC NOVA special licensure designation document to any licensed home care agency, adult care home, or nursing home that is determined by the independent review organization to have met the criteria for NC NOVA designation. The special licensure designation document shall be in addition to the operating license issued by the Division.

(f) The Division of Facility Services shall issue the NC NOVA special licensure document to successful applicants within 30 days of notification by the independent review organization.

(g) The NC NOVA special licensure designation shall be in effect for a two-year period unless the provider has a change in ownership.

(1) Upon a change in ownership, if the new owner wishes to continue the NC NOVA designation, the new owner must communicate the desire in writing to the independent review organization within 30 days of the effective date of the change of ownership and proceed with an expedited review in accordance with procedures detailed by the NC NOVA Partner Team and included in the NC NOVA Provider Information Manual.

  a. If the new owner continues to meet the NC NOVA criteria, based upon the expedited review, the special licensure designation will remain in effect for the remainder of the two-year period.

  b. If the new owner fails to meet NC NOVA criteria, the special designation document shall be immediately returned to the Division of Facility Services. The new owner may reapply for NC NOVA designation under subsection (e) of this section.

(2) Within 30 days of the effective date of the change of ownership, if the new owner fails to notify the independent review organization in writing of the desire to retain the special licensure designation by undergoing an expedited review, the designation will become null and void, and the special designation document must be immediately returned to the Division of Facility Services. (2006-104, s. 1.)

ARTICLE 9.

Certificate of Need.

§ 131E-175. Findings of fact.

CASE NOTES

Effect of Successive Certificate of Need Applications. — Issue of the denial of a hospital's 2003 application for a certificate of need (CON) for a replacement hospital was made moot by its 2005 application for a CON since the 2005 application covered the same facility and, compliant with G.S. 131E-175, G.S. 131E-183(a)(1), the State Medical Facilities Plan set maximum beds and operating rooms for the county. Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 623 S.E.2d 307, 2006 N.C. App. LEXIS 62 (2006).

Scope and Standard of Review. — The 2003 version of G.S. 150B-34(c), which excluded the Certificate of Need Act, G.S. 131E-175 et seq., from the requirements of G.S. 150B-36(b), (b1), (b2), (b3), and (d) and G.S. 150B-51, left the scope and standard of review applied under the 1999 version of G.S. 150B-51 undisturbed. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

Exemptions from Obtaining Certificate of Need. —

Hospital was not exempt under G.S. 131E-184 from the process of applying for a Certificate of Need to build a complete replacement hospital in the place of an existing hospital which it proposed to acquire. G.S. 131E-184(a)(5) allowed the replacement of an entire facility, but then only to replace or repair facilities destroyed or damaged by accident or natural disaster. Good Hope Hosp., Inc. v. N.C. HHS, — N.C. App. —, 623 S.E.2d 315, 2006 N.C. App. LEXIS 63 (2006).

Award of Certificate of Need Affirmed. — Decision of the North Carolina Department of Health and Human Services to award a certificate of need for new kidney dialysis machines to an applicant was affirmed as the agency's findings were supported by sufficient evidence, and it did not exceed its statutory authority in using enhanced competition and consumer choice as key factors in a comparative analysis. Total Renal Care of N.C., LLC v. N.C.HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

Agency Decision Reversed. — Final agency decision of the North Carolina Department of Health and Human Services (DHHS), which upheld two settlement agreements between the DHHS' Certificate of Need (CON) section and a group of medical centers and issued a CON to the group for a hospital project was reversed on appeal, because the DHHS failed to follow statutory procedure when it rejected an administrative law judge's recommendation to deny the CON applications of the group by erroneously considering new evidence, which it had no statutory authority to do. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

Cited in Carillon Assisted Living, L.L.C. v. N.C. HHS, — N.C. App. —, 623 S.E.2d 629, 2006 N.C. App. LEXIS 60 (2006).

§ 131E-176. Definitions.

CASE NOTES

"New Institutional Health Service." — "New institutional health service" as defined in G.S. 131E-176(16) was interpreted to include a new hospital intended to replace an existing hospital. Good Hope Hosp., Inc. v. N.C. HHS, — N.C. App. —, 623 S.E.2d 315, 2006 N.C. App. LEXIS 63 (2006).

No Exemption For Complete Replacement Hospital. — Hospital was not exempt under G.S. 131E-184 from the process of applying for a Certificate Of Need to build a complete replacement hospital in the place of an existing hospital which it proposed to acquire. G.S. 131E-184(a)(5) allowed the replacement of an entire facility, but then only to replace or repair facilities destroyed or damaged by accident or natural disaster. Good Hope Hosp., Inc. v. N.C. HHS, — N.C. App. —, 623 S.E.2d 315, 2006 N.C. App. LEXIS 63 (2006).

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

§ 131E-178. Activities requiring certificate of need.

CASE NOTES

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

§ 131E-182. Application.

CASE NOTES

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

§ 131E-183. Review criteria.

CASE NOTES

Statutory Criteria Met. — Decision of the North Carolina Department of Health and Human Services to award a certificate of need for new kidney dialysis machines to an applicant was affirmed as the agency's findings were supported by sufficient evidence, and it did not exceed its statutory authority in using enhanced competition and consumer choice as key factors in a comparative analysis. Total Renal Care of N.C., LLC v. N.C.HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

Effect of Successive Certificate of Need Applications. — Issue of the denial of a hospital's 2003 application for a certificate of need (CON) for a replacement hospital was made moot by its 2005 application for a CON since the 2005 application covered the same facility and, compliant with G.S. 131E-175, G.S. 131E-183(a)(1), the State Medical Facilities Plan set maximum beds and operating rooms for the county. Good Hope Health Sys., L.L.C. v. N.C. HHS, — N.C. App. —, 623 S.E.2d 307, 2006 N.C. App. LEXIS 62 (2006).

Department Decision Reversed. — Final agency decision of the North Carolina Department of Health and Human Services (DHHS), which upheld two settlement agreements between the DHHS' Certificate of Need (CON) section and a group of medical centers and issued a CON to the group for a hospital project was reversed on appeal, because the DHHS failed to follow statutory procedure when it rejected an administrative law judge's recommendation to deny the CON applications of the group by erroneously considering new evidence, which it had no statutory authority to do. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

§ 131E-184. Exemptions from review.

CASE NOTES

No Exemption For Complete Replacement Hospital. — Hospital was not exempt under G.S. 131E-184 from the process of applying for a Certificate Of Need to build a complete replacement hospital in the place of an existing hospital which it proposed to acquire. G.S. 131E-184(a)(5) allowed the replacement of an entire facility, but then only to replace or repair facilities destroyed or damaged by accident or natural disaster. Good Hope Hosp., Inc. v. N.C. HHS, — N.C. App. —, 623 S.E.2d 315, 2006 N.C. App. LEXIS 63 (2006).

Exhaustion of Administrative Remedies. — Trial court did not err in dismissing appeal filed by hospital joint venture and a town in an action to permit the construction of a new hospital under the exemption provisions of G.S. 131E-184(a) where the hospital joint venture and the town failed to exhaust their administrative remedies by pursuing an administrative review hearing as provided by G.S. 131E-78(b)(1), the available administrative remedies were not inadequate to resolve the dispute, the plaintiffs failed to state an equal protection claim upon which relief could be granted in that they failed to allege the lack of a rational basis; and the complaint failed to meet the heightened standard required to overcome a regional hospital's Noerr immunity after it commented against the issuance of a certificate of need to the building of a new hospital. Good Hope Hosp., Inc. v. N.C. HHS, 174 N.C. App. 266, 620 S.E.2d 873, 2005 N.C. App. LEXIS 2399 (2005).

§ 131E-185. Review process.

CASE NOTES

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

§ 131E-186. Decision.

CASE NOTES

Department Decision Reversed. — Final agency decision of the North Carolina Department of Health and Human Services (DHHS), which upheld two settlement agreements between the DHHS' Certificate of Need (CON) section and a group of medical centers and issued a CON to the group for a hospital project was reversed on appeal, because the DHHS failed to follow statutory procedure when it rejected an administrative law judge's recommendation to deny the CON applications of the group by erroneously considering new evidence, which it had no statutory authority to do. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

§ 131E-187. Issuance of a certificate of need.

CASE NOTES

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

§ 131E-188. Administrative and judicial review.

CASE NOTES

Award of Certificate of Need Affirmed. — Decision of the North Carolina Department of Health and Human Services to award a certificate of need for new kidney dialysis machines to an applicant was affirmed as the agency's findings were supported by sufficient evidence, and it did not exceed its statutory authority in using enhanced competition and consumer choice as key factors in a comparative analysis. Total Renal Care of N.C., LLC v. N.C.HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

In a hospital's contested case petition under G.S. 131E-188(a) to challenge the conditional approval of a certificate of need (CON) permitting a medical center to expand its emergency room facilities, the medical center was entitled to summary judgment because the hospital did not prove substantial prejudice from the CON under G.S. 150B-23(a); the hospital's claim of prejudice from challenges by the medical center to a facility it was building had been declared moot in another action, and judicial estoppel did not bar the medical center from claiming that the hospital was not substantially prejudiced because the other action was not related and did not stem from a common set of circumstances. Presbyterian Hosp. v. N.C. HHS, — N.C. App. —, 630 S.E.2d 213, 2006 N.C. App. LEXIS 1184 (2006).

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

ARTICLE 15A.

Public Hospital Personnel Act.

§ 131E-257. Title; purpose; applicability of other laws; "public hospital" defined.

CASE NOTES

Public Hospital Employee Records. — Trial court erred in granting summary judgment to a newspaper in its action under the Public Records Act, G.S. 132-1 et seq., and the Public Hospital Personnel Act, G.S. 131E-257 et seq., seeking disclosure of public hospital employee salary information, as such was protected from disclosure, except as to current salary, pursuant to G.S. 131E-257.2; information contained in an employee's personnel file was "gathered" by the hospital, pursuant to the use of that term under G.S. 131E-257.2(a), as it was not construed narrowly, but rather, read to mean amassed or collected in one place. Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

§ 131E-257.2. Privacy of employee personnel records.

CASE NOTES

Construction. — Although documents under the definition of "public records" of G.S. 132-1(a) of the Public Records Act, G.S. 132-1 et seq., were usually subject to disclosure, an exemption existed for public hospital personnel files under the clear and unambiguous language of G.S. 131E-257.2 of the Public Hospital Personnel Act, and "personnel files" was defined broadly in G.S. 131E-257.2(a); the interpretation of what information was to be disclosed from those files was based on statutory history, including changes made from predecessor language, as well as the legislature's intent to carve out a privacy niche for public hospital employees for all information regarding compensation except "current salary." Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

"Gathered." — Trial court erred in granting summary judgment to a newspaper in its action under the Public Records Act, G.S. 132-1 et seq., and the Public Hospital Personnel Act, G.S. 131E-257 et seq., seeking disclosure of public hospital employee salary information, as such was protected from disclosure, except as to current salary, pursuant to G.S. 131E-257.2; information contained in an employee's personnel file was "gathered" by the hospital, pursuant to the use of that term under G.S. 131E-257.2(a), as it was not construed narrowly, but rather, read to mean amassed or collected in one place. Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

ARTICLE 16.

Miscellaneous Provisions.

§ 131E-267. Fees for departmental review of health care facility construction projects.

The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis, as follows, and shall not exceed twenty-five thousand dollars ($25,000) for any single project:

Institutional Project	**Project Fee**
Hospitals	$300.00 plus $0.20/square foot of project space
Nursing Homes	$250.00 plus $0.16/square foot of project space
Ambulatory Surgical Facility	$200.00 plus $0.16/square foot of project space
Psychiatric Hospital	$200.00 plus $0.16/square foot of project space
Adult Care Home 7 or more beds	$175.00 plus $0.10/square foot of project space

Residential Project	**Project Fee**
Family Care Homes	$175.00 flat fee
ICF/MR Group Homes	$275.00 flat fee
Group Homes: 1-3 beds	$100.00 flat fee
Group Homes: 4-6 beds	$175.00 flat fee
Group Homes: 7-9 beds	$225.00 flat fee
Other residential: More than 9 beds	$225.00 plus $0.075/square foot of project space.

(2003-284, s. 34.11(a); 2005-276, s. 41.2(j); 2006-66, s. 10.22.)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 10.22, effective July 1, 2006, substituted "twenty-five thousand dollars ($25,000)" for "twelve thousand five hundred dollars ($12,500)" in the last sentence of the first paragraph.

Chapter 132.

Public Records.

Sec.
132-1.4. Criminal investigations; intelligence information records; Innocence Inquiry Commission records.

Sec.
132-1.10. Social security numbers and other personal identifying information.

§ 132-1. "Public records" defined.

Local Modification. — Alamance: 1987 (Reg. Sess., 1988), c. 950, s. 1(c); Ashe: 1991, c. 163, s. 1(c); Burke: 1989, c. 422, s. 1(c); Caldwell: 1987, c. 472, s. 1(c); Chatham: 1993 (Reg. Sess., 1994), c. 642, s. 1(c); Cleveland: 1989, c. 173, s. 1(c); Cumberland: 1993, ch. 413, s. 5; Davidson: 1993, c. 453, s. 1(c); Davie: 1989 (Reg. Sess., 1990), c. 928, s. 1(c); Gaston: 1987, c. 618, s. 1(c); Guilford: 1993, c. 82, s. 1; 1995, c. 432, s. 1; Henderson: 1987, c. 172, s. 5(c); Hertford: 1987 (Reg. Sess., 1988), c. 979, s. 1(c); Hyde: 1991, c. 230, s. 1(c); Lee: 1987, c. 538, s. 1(c); Lenoir: 1987, c. 561, s. 1(c); Lincoln: 1993, c. 549, s. 1; Mecklenburg: 1993, c. 82, s. 1; 1995, c. 432, s. 1; Mitchell: 1987, c. 141, s. 1(c); Nash: 1987, c. 32; 1993, c. 82, s. 1; 1993, c. 545; 1995, c. 432, s. 1; New Hanover: 1995, c. 432, s. 1; Pender: 1987 (Reg. Sess., 1988), c. 970, s. 1(c) (repealed by 2001-439, s. 6.1, on effective date of a tax levied under the 2001 act); Pitt: 1987, c. 143, s. 1(c); 1993, c. 82, s. 1; 1993, ch. 410, s. 1; 1995, c. 432, s. 1; Rowan: 1987, c. 379, s. 1(c); 1991 (Reg. Sess., 1992), c. 882; Rutherford: 1991, c. 577, s. 5(c); Wake: 1991, c. 594, s. 9; 1995, c. 458, s. 5; Washington: 1991 (Reg. Sess., 1992), c. 821; Wilson: 1987, c. 484, s. 1(c); Yancey: 1987, c. 140, s. 1(c); city of Albemarle: 1991 (Reg. Sess., 1992), c. 915 (repealed on effective date of a tax levied under 2001-434, ss. 6, 7, by the County of Stanly); city of Charlotte: 2000-26, s. 1; city of Conover: 1987, c. 319, s. 1; city of Greensboro: 1987, c. 51; 1989, c. 383, s. 1; 1993, c. 82, s. 1; 1995, c. 432, s. 1; city of Hickory: 1987, c. 319, s. 1; city of High Point: 1993, c. 82, s. 1; 1995, c. 432, s. 1; city of Kinston: 1993 (Reg. Sess., 1994), c. 648, s. 1(c); city of Thomasville: 1993, c. 453, s. 1(c); city of Wilmington: 1995, c. 432, s. 1; town of Blowing Rock: 1987, c. 171, s. 1(c); town of Boone: 1987, c. 170, s. 1(c); town of Cary: 1989 (Reg. Sess., 1990), c. 874, s. 1(c); town of Columbus: 1991, c. 632, s. 1(c); town of Garner: 1989, c. 660, s. 1(c); town of Hillsborough: 1993, c. 449, s. 1(e); town of Oriental: 1993 (Reg. Sess., 1994), c. 695, s. 1(c); town of Wake Forest: 1989, c. 604, s. 1(c); Averasboro Township: 1987, c. 142; village of Bald Head Island: 1991, c. 664, s. 2(c).

CASE NOTES

Construction. —

Trial court erred in granting summary judgment to a newspaper in its action under the Public Records Act, G.S. 132-1 et seq., and the Public Hospital Personnel Act, G.S. 131E-257 et seq., seeking disclosure of public hospital employee salary information, as such was protected from disclosure, except as to current salary, pursuant to G.S. 131E-257.2; information contained in an employee's personnel file was "gathered" by the hospital, pursuant to the use of that term under G.S. 131E-257.2(a), as it was not construed narrowly, but rather, read to mean amassed or collected in one place. Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

What Must Be Made Available for Inspection. —

Although documents under the definition of "public records" of G.S. 132-1(a) of the Public Records Act, G.S. 132-1 et seq., were usually subject to disclosure, an exemption existed for public hospital personnel files under the clear and unambiguous language of G.S. 131E-257.2 of the Public Hospital Personnel Act, and "personnel files" was defined broadly in G.S. 131E-257.2(a); the interpretation of what information was to be disclosed from those files was based on statutory history, including changes made from predecessor language, as well as the legislature's intent to carve out a privacy niche for public hospital employees for all information regarding compensation except "current salary." Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

§ 132-1.4. Criminal investigations; intelligence information records; Innocence Inquiry Commission records.

(a) Records of criminal investigations conducted by public law enforcement agencies, records of criminal intelligence information compiled by public law enforcement agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

(b) As used in this section:

(1) "Records of criminal investigations" means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements.

(2) "Records of criminal intelligence information" means records or information that pertain to a person or group of persons that is compiled by a public law enforcement agency in an effort to anticipate, prevent, or monitor possible violations of the law.

(3) "Public law enforcement agency" means a municipal police department, a county police department, a sheriff's department, a company police agency commissioned by the Attorney General pursuant to G.S. 74E-1, et seq., and any State or local agency, force, department, or unit responsible for investigating, preventing, or solving violations of the law.

(4) "Violations of the law" means crimes and offenses that are prosecutable in the criminal courts in this State or the United States and infractions as defined in G.S. 14-3.1.

(5) "Complaining witness" means an alleged victim or other person who reports a violation or apparent violation of the law to a public law enforcement agency.

(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be public records within the meaning of G.S. 132-1.

(1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.

(2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.

(3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.

(4) The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness.

(5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.

(6) The name, sex, age, and address of a complaining witness.

(d) A public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132-6 as soon as the circumstances that justify withholding it cease to exist. Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(e) If a public law enforcement agency believes that release of information that is a public record under subdivisions (c)(1) through (c)(5) of this section will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such action the law enforcement agency shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Nothing in this section shall be construed as authorizing any public law enforcement agency to prohibit or prevent another public agency having custody of a public record from permitting the inspection, examination, or copying of such public record in compliance with G.S. 132-6. The use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record.

(g) Disclosure of records of criminal investigations and criminal intelligence information that have been transmitted to a district attorney or other attorney authorized to prosecute a violation of law shall be governed by this section and Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed as requiring law enforcement agencies to disclose the following:

(1) Information that would not be required to be disclosed under Chapter 15A of the General Statutes; or

(2) Information that is reasonably likely to identify a confidential informant.

(i) Law enforcement agencies shall not be required to maintain any tape recordings of "911" or other communications for more than 30 days from the time of the call, unless a court of competent jurisdiction orders a portion sealed.

(j) When information that is not a public record under the provisions of this section is deleted from a document, tape recording, or other record, the law enforcement agency shall make clear that a deletion has been made. Nothing in this subsection shall authorize the destruction of the original record.

(k) The following court records are public records and may be withheld only when sealed by court order: arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders.

(*l*) Records of investigations of alleged child abuse shall be governed by Article 29 of Chapter 7B of the General Statutes. (1993, c. 461, s. 1; 1998-202, s. 13(jj); 2006-184, s. 7.)

Effect of Amendments. — Session Laws 2006-184, s. 7, effective August 3, 2006, and applicable to claims of factual innocence filed on or before December 31, 2010, added "Innocence Inquiry Commission records" at the end of the section catchline; and, in the first sentence of subsection (a), substituted "agencies" for "agencies or" near the beginning and inserted "and records of investigations conducted by the North Carolina Innocence Inquiry Commission" and made minor punctuation changes.

§ 132-1.10. Social security numbers and other personal identifying information.

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following:

(1) Collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a social security number from an individual, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a valid public records request.

(3) Fail, when collecting a social security number from an individual, to provide, at the time of or prior to the actual collection of the social security number by that agency, that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than thepurpose stated.

(5) **(For applicability date — See Editor's note)** Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information", as used in this subdivision, shall have the same meaning as in G.S. 14-113.20(b), except it shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or drivers license numbers appearing on law

enforcement records. Identifying information shall be confidential and not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information. The presence of identifying information in a public record does not change the nature of the public record. If all other public records requirements are met under this Chapter, the agency of the State or its political subdivisions shall respond to a public records request, even if the records contain identifying information, as promptly as possible, by providing the public record with the identifying information removed or redacted.

(6) **(Effective July 1, 2007)** Intentionally print or imbed an individual's social security number on any card required for the individual to access government services.

(7) **(Effective July 1, 2007)** Require an individual to transmit the individual's social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(8) **(Effective July 1, 2007)** Require an individual to use the individual's social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) **(Effective July 1, 2007)** Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed. A social security number that is permitted to be mailed under this subdivision may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) To social security numbers or other identifying informationdisclosed pursuant to a court order, warrant, or subpoena.

(3) To social security numbers or other identifying informationdisclosed for public health purposes pursuant to and incompliance with Chapter 130A of the General Statutes.

(4) To social security numbers or other identifying information that have been redacted.

(5) To certified copies of vital records issued by the State Registrar and other authorized officials pursuant to G.S. 130A-93(c). The State Registrar may disclose any identifying information other than social security numbers on any uncertified vital record.

(6) To any recorded document in the official records of the register of deeds of the county.

(7) To any document filed in the official records of the courts.

(c1) If an agency of the State or its political subdivisions, or any agent or employee of a government agency, experiences a security breach, as defined in Article 2A of Chapter 75 of the General Statutes, the agency shall comply with the requirements of G.S. 75-65.

(d) No person preparing or filing a document to be recorded or filed in the official records of the register of deeds, the Department of the Secretary of

State, or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of deeds or the Department of the Secretary of State. The register of deeds or the Department of the Secretary of State may not reject an instrument presented for recording because the instrument contains an individual's personal information.

(f) **(Expires July 1, 2007)** Any person has the right to request that the Department of the Secretary of State, a register of deeds or clerk of court remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or court to display public records by the Department of the Secretary of State, the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the Department of the Secretary of State, the register of deeds, the clerk of court, their staff, or upon order of the court. The Department of the Secretary of State, the register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(f) **(Effective July 1, 2007)** Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(g) **(Expires July 1, 2007)** The Department of the Secretary of State, a register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request the Department of the Secretary of State, a register of deeds or clerk of court to remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account,

credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(g) **(Effective July 1, 2007)** A register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request a register of deeds or clerk of court to remove, from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(h) **(Expires July 1, 2007)** Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to the Department of the Secretary of State, a register of deeds or clerk of court or to their agents for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court.

(h) **(Effective July 1, 2007)** Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result

G.S. 132-1.10(f), (g), and (h) are set out twice. See note.

from a social security number or other identifying information on the public record or on a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by a register of deeds or clerk of court. (2005-414, s. 4; 2006-173, ss. 1-7.)

Subsections (f), (g) and (h) Set Out Twice. — The first version of subsections (f), (g) and (h) set out above expire on July 1, 2007. The second version of subsections (f), (g) and (h) set out above are effective July 1, 2007.

Editor's Note. —

Session Laws 2006-173, s. 8, provides: "The provisions of G.S. 132-1.10(b)(5) shall not apply to identifying information accessible on the Internet Web site of the Department of the Secretary of State or by magnetic tapes, electronic data feeds, or electronic file transfers of all records or updates of records on file with the Secretary of State until July 1, 2007. Notwithstanding the exemption provided by this section, the Department of the Secretary of State shall, whenever funds are made available, make it a priority to first remove identifying information contained in Uniform Commercial Code financing statements filed with the Department of the Secretary of State under Chapter 25 of the General Statutes no later than June 30, 2007."

Session Laws 2006-173, s. 9, provides: "The Department of the Secretary of State shall study the alternatives and costs for redacting identifying information contained in the records of the Department of the Secretary of State, including the Internet Web site of the Department, and shall report the results of its study to the Office of State Budget and Management and to the House and Senate cochairs of the Joint Appropriations Subcommittee on General Government on or before February 1, 2007. This study shall focus on the most expeditious, cost-effective method of redacting identifying information on or before January 1, 2007."

Effect of Amendments. — Session Laws 2006-173, s. 1, effective October 1, 2006, added subsection (c1).

Session Laws 2006-173, s. 2, effective August 1, 2006, but not applicable to identifying information accessible on the Internet Web site of the Department of Secretary of State or by magnetic tapes, electronic data feeds, or electronic file transfer of all records or updates of records on file with the Secretary of State until July 1, 2007, added the last four sentences in subdivision (b)(5).

Session Laws 2006-173, ss. 3 and 4, effective August 1, 2006, in subsection (d), substituted "of" for "by," and inserted "the Department of the Secretary of State"; and inserted "or the Department of the Secretary of State" both times it appears in subsection (e).

Session Laws 2006-173, ss. 5 through 7, effective August 1, 2006, and expiring July 1, 2007, inserted "the Department of the Secretary of State" and "the Department of the Secretary of State's" throughout subsections (f) through (h); and substituted "their agents" for "his or her agent" in the second sentence of subsection (h).

§ 132-9. Access to records.

CASE NOTES

Contract to Buy Practice Not Competitive Health Care Information. — Because nothing suggested that other hospitals or entities were competing for a doctor's medical practice or that a medical center's contract to buy the doctor's practice contained "financial terms" or health care information directly related to financial terms, the contract was not confidential as "competitive health care information" pursuant to G.S. 131E-97.3. Carter-Hubbard Publ'g Co. v. WRMC Hosp. Operating Corp., — N.C. App. —, 633 S.E.2d 682, 2006 N.C. App. LEXIS 1653 (2006).

Chapter 135.

Retirement System for Teachers and State Employees; Social Security; Health Insurance Program for Children.

Article 1.

Retirement System for Teachers and State Employees.

Sec.
135-1. Definitions.
135-1.1. Licensing and examining boards.
135-3. Membership.
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ARTICLE 1.

Retirement System for Teachers and State Employees.

§ 135-1. Definitions.

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in G.S. 135-8.

(2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(3) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.

(4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(5) "Average final compensation" shall mean the average annual compensation of a member during the four consecutive calendar years of

membership service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. In the event a member is or has been in receipt of a benefit under the provisions of G.S. 135-105 or G.S. 135-106, the compensation used in the calculation of "average final compensation" shall be the higher of compensation of the member under the provisions of this Article or compensation used in calculating the payment of benefits under Article 6 of this Chapter as adjusted for percentage increases in the post disability benefit.

(6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Chapter.

(7) "Board of Trustees" shall mean the Board provided for in G.S. 135-6 to administer the Retirement System.

(7a) a. "Compensation" shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work. In addition to the foregoing, "compensation" shall include:

1. Performance-based compensation (regardless of whether paid in a lump sum, in periodic installments, or on a monthly basis);
2. Conversion of additional benefits to salary (additional benefits such as health, life, or disability plans), so long as the benefits are other than mandated by State law or regulation;
3. Payment of tax consequences for benefits provided by the employer, so long as they constitute an adjustment or increase in salary and not a "reimbursement of expenses";
4. Payout of vacation leave so long as such payouts are permitted by applicable law and regulation; and
5. Employee contributions to eligible deferred compensation plans.

b. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. "Compensation" includes all special pay contribution of annual leave made to a 401(a) Special Pay Plan for the benefit of an employee. Notwithstanding any other provision of this Chapter, "compensation" shall not include:

1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
2. Travel supplement/allowance (nonaccountable allowance plans);
3. Employer contributions to eligible deferred compensation plans;
4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);
5. Reimbursement of uninsured medical expenses;
6. Reimbursement of business expenses;
7. Reimbursement of moving expenses;
8. Reimbursement/payment of personal expenses;

9. Incentive payments for early retirement;
10. Bonuses paid incident to retirement;
11. Contract buyout/severance payments; and
12. Payouts for unused sick leave.

c. In the event an employer reports as "compensation" payments not specifically included or excluded as "compensation", such payments shall be "compensation" for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments.

(8) "Creditable service" shall mean the total of "prior service" plus "membership service" plus service, both noncontributory and purchased, for which credit is allowable as provided in G.S. 135-4. In no event, however, shall "creditable service" be deemed "membership service" for the purpose of determining eligibility for benefits accruing under this Chapter.

(9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the Board of Trustees shall fix the value of that part of the compensation not paid in money.

(10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include any person who is a member of the Consolidated Judicial Retirement System, any member of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly except participants in the Legislative Intern Program, pages, and beneficiaries in receipt of a monthly retirement allowance under this Chapter who are reemployed on a temporary basis. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard: Provided, further, that the Adjutant General, in his discretion, may terminate the Retirement System coverage of the above-described national guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the national guard described above who is now or hereafter may become a member of the

Retirement System may secure Retirement System credit for such service as a national guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if he had been a member during the years of ineligibility, plus interest. Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa.

(11) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid.

(11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.

(11b) "Law-Enforcement Officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State of North Carolina or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(12) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.

(13) "Member" shall mean any teacher or State employee included in the membership of the System as provided in G.S. 135-3 and 135-4.

(14) "Membership service" shall mean service as a teacher or State employee rendered while a member of the Retirement System.

(15) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(16) "Pensions" shall mean payments for life derived from money provided by the State of North Carolina, and by county or city boards of education. All pensions shall be payable in equal monthly installments.

(17) "Prior service" shall mean service rendered prior to the date of establishment of the Retirement System for which credit is allowable under G.S. 135-4; provided, persons now employed by the Board of Transportation shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to 1931.

(18) "Public school" shall mean any day school conducted within the State under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the State.

(19) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7, subsection (b).

(20) "Retirement" means the termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must render no service, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following the effective date of retirement.

(21) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.

(22) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.

(23) "Service" shall mean service as a teacher or State employee as described in subdivision (10) or (25) of this section.

(24) "Social security breakpoint" shall mean the maximum amount of taxable wages under the Federal Insurance Contributions Act as from time to time in effect.

(25) "Teacher" shall mean any teacher, helping teacher, teacher in a job-sharing position under G.S. 115C-326.5 except for a beneficiary in that position, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State: Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher or employee except for a teacher in a job-sharing position, and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1 or G.S. 135-5.4. In all cases of doubt, the Board of Trustees, hereinbefore defined, shall determine whether any person is a teacher as defined in this Chapter. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "teacher" solely because the person holds a temporary or time-limited visa. Notwithstanding the foregoing, the term "teacher" shall not include any nonimmigrant alien employed in elementary or secondary public schools (whether employed in a full-time, part-time, temporary, permanent, or substitute teacher position) and participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q).

(26) "Year" as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year unless otherwise defined by regulation of the Board of Trustees. (1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 81/2; 1959, c. 513, s. 1; c. 1263, s. 1; 1963, c. 687, s. 1; 1965, c. 750; c. 780, s. 1; 1969, c. 44, s. 74; c. 1223, s. 16; c. 1227; 1971, c. 117, ss. 1-5; c. 338, s. 1; 1973, c. 507, s. 5; c. 640, s. 2; c. 1233; 1975, c. 475, s. 1; 1977, c. 574, s. 1; 1979, c. 972, s. 1; 1981, c. 557, ss. 1, 2; 1983, c. 412, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 227; 1985, c. 649, s. 3; 1987, c. 738, ss. 29(a), 36(a); 1991, c. 51, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 7.31(c); 1998-1, s. 4(g); 2001-424, s. 32.24(b); 2001-426, ss. 2, 3; 2001-513, s. 24; 2002-110, s. 1; 2002-126, ss. 28.6(b), 28.12(a); 2002-174, s. 2; 2003-359, ss. 1, 2; 2004-81, s. 1; 2004-199, s. 34(a); 2005-276, s. 29.28(e); 2006-66, s. 22.21.)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-77, s. 1, provides: "Notwithstanding any other provision of law, a member of the Teachers' and State Employees' Retirement System who was employed by a community college, who filed for retirement before August 31, 2005, for an effective retirement date of November 1, 2005, and who was provided with incorrect information about the period of time a retired member must wait before returning to employment in order to continue receiving retirement benefits, may be reemployed by the State under the reemployment law that existed at the time the member filed for retirement."

Effect of Amendments. —

Session Laws 2005-276, s. 29.28(e), as amended by Session Laws 2006-66, s. 22.21, effective November 1, 2005, but not applicable to participants in The University of North Carolina Phased Retirement Program until the earlier of June 30, 2010, or 12 months after the issuance of final phased retirement regulations by the Internal Revenue Service, rewrote subdivision (20).

§ 135-1.1. Licensing and examining boards.

(a) Any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade or occupation, in its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to cause its employees so employed prior to July 1, 1983 to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such board's paying all of the employer's contributions or matching funds from funds of the board and on such board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such board may also be effected to the extent that such board requests provided the board pays all of the employer's contributions or matching funds necessary for such purpose and provided said board collects from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the Board of Trustees of the Retirement System determines, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds.

(b) **(Effective until July 1, 2007)** Notwithstanding any other provision of this Chapter, any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade, or occupation, and who is subject to the provisions of the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes, may make an irrevocable election by appropriate resolution of the board, on or before October 1, 2000, to become an employer in the Teachers' and State Employees' Retirement System. Retirement System coverage shall be conditioned on the board's payment of all of the employer's contributions or matching funds from funds of the board and on the board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the rules of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Any person who is an employee of the board on the date the board makes an irrevocable election to participate in the Retirement System may purchase creditable service for periods of employment with the board prior to the election by making a lump-sum payment equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the system's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service

G.S. 135-1.1(b) is set out twice. See note.

credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(b) **(Effective July 1, 2007)** Notwithstanding any other provision of this Chapter, any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade, or occupation, and who is subject to the provisions of the State Budget Act, Chapter 143C of the General Statutes, may make an irrevocable election by appropriate resolution of the board, on or before October 1, 2000, to become an employer in the Teachers' and State Employees' Retirement System. Retirement System coverage shall be conditioned on the board's payment of all of the employer's contributions or matching funds from funds of the board and on the board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the rules of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Any person who is an employee of the board on the date the board makes an irrevocable election to participate in the Retirement System may purchase creditable service for periods of employment with the board prior to the election by making a lump-sum payment equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the system's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. (1959, c. 1012; 1983, c. 412, s. 3; 2000-187, s. 1; 2006-203, s. 72.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2007. The second version of subsection (b) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act [July 1, 2007] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 72, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act, Chapter 143C" for "Executive Budget Act, Article 1 of Chapter 143" in the first sentence of subsection (b).

§ 135-3. Membership.

The membership of this Retirement System shall be composed as follows:

(1) All persons who shall become teachers or State employees after the date as of which the Retirement System is established. On and after July 1, 1947, membership in the Retirement System shall begin 90

days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this Chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a "teacher or employee," as the terms are defined in this Chapter. Under such rules and regulations as the Board of Trustees may establish and promulgate, Cooperative Agricultural Extension Service employees excluded from coverage under Title II of the Social Security Act may in the discretion of the governing authority of a county, become members of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county. On and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act who are required to accept a federal civil service appointment may elect in writing, on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the Local Retirement System; provided further, that effective July 1, 1985, an extension service employee excluded from coverage under Title II of the Social Security Act who is employed in part by a county and who is compensated in whole by the Cooperative Agricultural Extension Service pursuant to a contract where the Cooperative Agricultural Extension Service is reimbursed by the county for the county's share of the compensation shall participate exclusively in the Teachers' and State Employees' Retirement System to the extent of their full compensation. On or after July 1, 1979, upon election, appointment or employment, a legislative employee shall automatically become a member of the Teachers' and State Employees' Retirement System. At such time as Cooperative Agricultural Extension Service Employees excluded from coverage under Title II of the Social Security Act become covered by Title II of the Social Security Act, such employees shall no longer be covered by the provisions of this section, provided no accrued rights of these employees under this section prior to coverage by Title II of the Social Security Act shall be diminished.

(2) All persons who are teachers or State employees on February 17, 1941, or who may become teachers or State employees on or before July 1, 1941, except those who shall notify the Board of Trustees, in writing, on or before January 1, 1942, that they do not choose to become members of this Retirement System, shall become members of the Retirement System.

(3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member: Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions

were not withdrawn prior to July 1, 1967: Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

Notwithstanding the foregoing, any persons whose membership was terminated under the provisions set forth above who had five or more years of creditable service and had not effected a return of contributions may elect to receive a retirement allowance on or after age 60; provided that this member may retire only upon written application to the Board of Trustees setting forth at which time, not less than 30 days nor more than 90 days subsequent to the execution and filing, he desires to be retired.

(4) Notwithstanding any provisions contained in this section, any employee of the State of North Carolina who was taken over and required to perform services for the federal government, on a loan basis, and by virtue of an executive order of the President of the United States effective on or after January 1, 1942, and who on the effective date of such executive order was a member of the Retirement System and had not withdrawn all of his or her accumulated contributions, shall be deemed to be a member of the Retirement System during such period of federal service or employment by virtue of such executive order of the President of the United States. Any such employee who within a period of 12 months after the cessation of such federal service or employment, is again employed by the State or any employer as said term is defined in this Chapter, or within said period of 12 months engages in service or membership service, shall be permitted to resume active participation in the Retirement System and to resume his or her contributions as provided by this Chapter. If such member so elects, he or she may pay to the Board of Trustees for the benefit of the proper fund or account an amount equal to his or her accumulated contributions previously withdrawn with interest from date of withdrawal to time of payment and the accumulated contributions, with interest thereon, that such member would have made during such period of federal employment to the same extent as if such member had been in service or engaged in the membership service for the State or an employer as defined in this Chapter, which such payment of accumulated contributions shall be computed on the basis of the salary or earnable compensation received by such member on the effective date of such executive order.

(5) Any teacher or State employee whose membership is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership; but no such teacher or State employee shall receive prior service credit unless he elected to become a member prior to July 1, 1946. Any such member on or after June 30, 1965, anything in this Chapter to the contrary, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank on or before January 1, 1942, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1.

(7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963, and who became entitled to benefits hereunder in accordance with the provisions

hereof. Such benefits shall be computed in accordance with the provisions of G.S. 135-5(b) as in effect at the date of such retirement.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b), subdivisions (1), (2) and (3).

b. In lieu of the benefits provided in paragraph a of this subdivision (7) any member who separates from service on or after July 1, 1951, and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July 1, 1951, and prior to the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, subsequent to July 1, 1951, and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

d. Should a teacher or employee who retired on an early or service retirement allowance be restored to service prior to the attainment of the age of 62 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to the allowance described in 1 below reduced by the amount in 2 below.

1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total

creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.

2. The actuarial equivalent of the retirement benefits he previously received.

e. Should a teacher or employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of his retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1, and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 135-1(3).

(8) The provisions of this subsection (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, or whose account is active on July 1, 1967, or has not withdrawn his contributions, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested.

b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

Age at Retirement	*Percentage Reduction*
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.

b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.

b3. Vested deferred retirement allowance of members retiring on or after July 1, 1994. — In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.

c. **(Effective until June 30, 2007)** Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any capacity with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach in a permanent full-time or part-time capacity that exceeds fifty percent (50%) of the applicable workweek in a public school. The Department of Public Instruction shall certify to the Retirement System that a

G.S. 135-3(8)c is set out twice. See note.

beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment.

c. **(Effective June 30, 2007)** Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

d. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance

that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.

e. Any beneficiary who retired on an early or service retirement allowance as an employee of any State department, agency or institution under the Law Enforcement Officers' Retirement System and becomes employed as an employee by a State department, agency, or institution as an employer participating in the Retirement System shall become subject to the provisions of G.S. 135-3(8)c and G.S. 135-3(8)d on and after January 1, 1989.

(8a) Notwithstanding the provisions of paragraphs c and d of subdivision (8) to the contrary, a beneficiary who was a beneficiary retired on an early or service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by the State and beneficiaries last employed by the State to this Retirement System on January 1, 1985, and who also was a contributing member of this Retirement System on January 1, 1985, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership.

(9) Members who are participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 may retain their membership status and receive all benefits provided by this Chapter during the period of the exchange provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall, notwithstanding whether he and his employer are making contributions to the member's account during the exchange period, be entitled to the death benefit if he otherwise qualifies under the provisions of this Article and provided further that no duplicate benefits shall be paid. (1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 91/2; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2; 1965, c. 780, s. 1; c. 1187; 1967, c. 720, ss. 1, 2, 15; c. 1234; 1969, c. 1223, ss. 1, 2, 14; 1971, c. 117, ss. 6-8; c. 118, ss. 1, 2; 1973, c. 241, s. 1; c. 994, s. 5; c. 1363; 1977, c. 783, s. 3; 1979, c. 396; c. 972, s. 2; 1981, c. 979, s. 1; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 228, 229, 236; c. 1106, ss. 1, 2, 4; 1985, c. 520, s. 1; c. 649, ss. 2, 11; 1987, c. 513, s. 1; c. 738, s. 38(b); 1989, c. 791; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(e), (f), 7.31(d), (e); 1995, c. 509, s. 73.1; 1998-212, s. 28.24(a); 1998-217, s. 67; 2000-67, s. 8.24(a); 2001-424, s. 32.25(a); 2002-126, ss. 28.10(a), (b), (d), 28.13(a); 2004-124, s. 31.18A(a), (b); 2004-199, s. 57(a); 2005-144, ss. 7A.1, 7A.2, 7A.4; 2005-276, ss. 29.28(a)-(d); 2005-345, s. 43; 2006-226, s. 25(a).)

Subdivision (8)c Set Out Twice. — The first version of subdivision (8)c set out above is effective until June 30, 2007. The second version of subdivision (8)c set out above is effective June 30, 2007.

Effect of Amendments. —

Session Laws 2006-226, s. 25(a), effective June 30, 2007, deleted "in full time capacity that exceeds fifty percent (50%) of the applicable workweek" from the end of subdivision (8)c.

§ 135-4A: Recodified as G.S. 135-4.1 by Session Laws 2006-264, s. 14, effective August 27, 2006.

§ 135-4.1. Reciprocity of creditable service with other State-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Legislative Retirement System, Consolidated Judicial Retirement System, or the Local Governmental Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Legislative Retirement System, Consolidated Judicial Retirement System, or the Local Governmental Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits. (1989 (Reg. Sess., 1990), c. 1066, s. 35(c); 2006-264, s. 14.)

Editor's Note. — This section was formerly codified as G.S. 135-4A. It was recodified as G.S. 135-4.1 by Session Laws 2006-264, s. 14, effective August 27, 2006.

§ 135-5. Benefits.

(a) Service Retirement Benefits. —

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein

required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later.

(a1) Early Service Retirement Benefits. — Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:

a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and

b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4,800) plus one and one-half

percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars ($4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b2) Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b3) Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) If the member's service retirement date occurs before his sixty-second birthday but on or after his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1975. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1975, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b5) Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1975, but prior to July 1, 1977, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b6) Service Retirement Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the

completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b7) Service Retirement Allowance of Members Retiring on or after July 1, 1980, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1980, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2) above.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b8) Service Retirement Allowance of Law-Enforcement Officers Retiring on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985]. — Upon retirement from service, in accordance with subsection (a) of this section, on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985], a member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

(1) A member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in a. above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and fifty-eight hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 or more years of creditable service, his retirement allowance shall be computed as in a. above but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's service retirement date occurs before his 60th birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in b. above.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1993. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1993, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.
  b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b., c., and d.

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1993, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1993, but before July 1, 1994, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, the allowance shall be computed as in G.S. 135-5(b14)(1)a., but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 135-5(b14)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's service retirement date occurs before his 60th birthday and prior to the completion of 30 or more years of creditable service, the service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b14)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b15)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b15)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance provided by G.S. 135-5(b14)(2)c.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b16) Service Retirement Allowance of Members Retiring on or After July 1, 1995, but Before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

  a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of his creditable service.

  b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

    1. The service retirement allowance payable under G.S. 135-5(b16)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

    2. The service retirement allowance as computed under G.S. 135-5(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

  a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of creditable service.

  b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b16)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

  c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

    1. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th

birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b16)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b17) Service Retirement Allowance of Members Retiring on or After July 1, 1997, but Before July 1, 2000. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 2000, a member shall receive the following service retirement allowance.

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b17)(1)a, reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b17)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b17)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b18) Service Retirement Allowance of Members Retiring on or After July 1, 2000, but Before July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2002, a member shall receive the following service retirement allowance.

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b18)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of creditable service.
   b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b18)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
   c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
      1. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
      2. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
      3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b18)(2)b.
   d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b19) Service Retirement Allowance of Members Retiring on or After July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2002, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
  1. The service retirement allowance payable under G.S. 135-5(b19)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
  2. The service retirement allowance as computed under G.S. 135-5(b19)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of creditable service.
- b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b19)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
  1. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. but reduced by the sum of five-twelfths of one percent (5⁄12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
  2. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
  3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b19)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988. — The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a fifty percent (50%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;

(2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.

(2) Notwithstanding the foregoing provisions,

a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 135-5(d2);

b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and

c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982, Who Left Service prior to January 1, 1988. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member who left service prior to January 1, 1988 shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired for Disability. — The provisions of this subsection shall be applicable to members retired on a disability retirement allowance and shall not be applicable to members in service on or after January 1, 1988. Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

(1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall

equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a. below reduced by the amount in b. below:

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1),(d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 60 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 240 days after such request, the right of a beneficiary to a benefit under the Article may be terminated.

The Director of the State Retirement System shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law-Enforcement Officers' Retirement System and becomes employed as an employee other than as a law-enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this subsection. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this subsection.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an

employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(f) Return of Accumulated Contributions. — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disability benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection.

(f1) Expired.

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Options 2, 3, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1.(a) In the Case of a Member Who Retires prior to July 1, 1963. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option 5. For Members Retiring Prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option

2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative.

In the event a retiree purchases creditable service as provided in G.S. 135-4, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947. — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members. — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

(1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars ($15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars ($70.00) per month.

(2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars ($10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(*l*) Death Benefit Plan. — There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars ($25,000) and to a maximum of fifty thousand dollars ($50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (*l*) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

(1) After December 31, 1968 and after he has attained age 70; or
(2) After December 31, 1969 and after he has attained age 69; or
(3) After December 31, 1970 and after he has attained age 68; or
(4) After December 31, 1971 and after he has attained age 67; or
(5) After December 31, 1972 and after he has attained age 66; or
(6) After December 31, 1973 and after he has attained age 65; or
(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:

  a. When employment has been terminated, the last day the member actually worked.

  b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).

(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).

(4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars ($9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(*l*1) Reciprocity of Death Benefit Plan. — Only for the purpose of determining eligibility for the death benefit provided for in subsection (*l*) of this section, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time. In no event shall a death benefit provided for in G.S. 135-5(*l*) be paid if a death benefit is paid under G.S. 135-63.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that the following conditions apply:

(1)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance,

b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b19)(1)b. or G.S. 135-5(b19)(2)c., notwithstanding the requirement of obtaining age 50, or

c. The member had not commenced to receive a retirement allowance as provided under this Chapter.

(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (*l*) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(o) Post-Retirement Increases in Allowances. — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum, but not more than four per centum (4%); provided that any such increase in allowances shall become effective only if the additional liabilities on account of such increase do not require an increase in the total employer rate of contributions.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

Notwithstanding the above paragraphs, retired members and beneficiaries may receive cost-of-living increases in retirement allowances if active members of the system receive across-the-board cost-of-living salary increases. Such increases in post-retirement allowances shall be comparable to cost-of-living salary increases for active members in light of the differences between the statutory payroll deductions for State retirement contributions, Social Security taxes, State income withholding taxes, and federal income withholding taxes required of each group. The increases for retired members shall include the cost-of-living increases provided in this section. The cost-of-living increases allowed retired and active members of the system shall be comparable when each group receives an increase that has the same relative impact upon the net disposable income of each group.

(p) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Year(s) in Which Benefits Commenced	*Percentage*
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, effective July 1, 1973, any member who retired after attaining the age of 60 with 15 or more years of creditable service shall receive a monthly benefit of no less than seventy-five dollars ($75.00) prior to the application of any optional benefit.

(s) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (o).

(t) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(u) Repealed by Session Laws 1975, c. 875, s. 47.

(v) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 135-5(o) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System unless the 1975 Session of the General Assembly provides an appropriation to fund this provision.

(x) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1976, which shall become payable on July 1, 1977, and to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the years beginning July 1, 1977, and July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(z) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1975. — From and after July 1, 1977, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1975, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly retirement allowances as of July 1, 1977, have been increased to the extent provided for in the preceding subsection (o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(aa) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (cc) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(cc) Increases in Benefits to Those Persons Who Were Retired Prior to July 1, 1977. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

Period in Which Benefits Commenced	*Percentage*
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(dd) From and after July 1, 1981, the retirement allowance to or on account of the beneficiaries whose retirement commenced prior to July 1, 1980, shall be increased by three percent (3%). These increases shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (ee) of this section.

(ee) Adjustment in Allowances Paid Beneficiaries Whose Retirement Commenced Prior to July 1, 1980. — From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (dd) of this section.

(ff) From and after July 1, 1982, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1981, shall be increased by one-tenth of one percent (0.1%) of the allowance payable on July 1, 1981.

(gg) From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by two and one-half percent (2.5%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (o) of this section, plus an additional one and one-half percent (1.5%) of the allowance payable on July 1, 1982, in order to supplement the increase payable in accordance with subsection (o) of this section.

(hh) Notwithstanding any other provision of this Chapter, from and after July 1, 1983, the retirement allowance payable to each teacher and State employee, who retired prior to July 1, 1973, and who is in receipt of a reduced retirement allowance based upon 30 or more years of contributing membership service, shall be increased by the elimination of the reduction factors applicable at the time of their retirement under G.S. 135-3(8) or G.S. 135-5(b3). The provisions of this subsection shall apply equally to the allowance of a surviving annuitant of a beneficiary.

(ii) From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1983, in accordance with G.S. 135-5(o), plus an additional four and two-tenths percent (4.2%) of the allowance payable on July 1, 1983.

(jj) Increase in Allowance Where Retirement Commenced on or before July 1, 1984, or after that Date, but before June 30, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(kk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable under subsection (o) of this section or otherwise granted by act of the 1985 Session of the General Assembly.

(*ll*) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(mm) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(nn) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(oo) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(pp) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(qq) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(rr) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ss) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(tt) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992. — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(uu) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(vv) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1993. — From and after July 1, 1993, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1993, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1993. This allowance shall be calculated on the allowance payable and in effect on June 30, 1993, so as not to be compounded on any other increase granted by act of the 1993 General Assembly.

(ww) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(xx) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase granted by act of the 1993 General Assembly, 1994 Regular Session.

(yy) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(zz) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(aaa) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase granted by act of the 1995 General Assembly.

(bbb) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 135-5(o). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ccc) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1977, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(ddd) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997. — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase granted by act of the 1997 General Assembly.

(eee) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(fff) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(ggg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2000. — From and after July 1, 2000, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2000, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase granted by act of the 1999 General Assembly, 2000 Regular Session.

(hhh) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(iii) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(jjj) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(kkk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002. — From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase granted by act of the 2002 Regular Session of the 2001 General Assembly.

(*lll*) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(mmm) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2003, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2003, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2003, and June 30, 2004.

(nnn) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005.

(ooo) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2005, and June 30, 2006.

(ppp) Credit at Full Cost for Service with The University of North Carolina During Which a Member Participated in the Optional Retirement Program. — Notwithstanding any other provisions of this Chapter, a member,upon the completion of five years of membership service, may purchase creditable service for periods of employment with The university of North Carolina during which the member participated in the Optional Retirement Program as provided for in G.S. 135-5.1, provided that the member is not receiving, and is not entitled to receive, any retirement benefits resulting from this employment. The member shall purchase this service by making a lump-sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability",and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3; 1975, c. 457, ss. 2-4; c. 511, ss. 1, 2; c. 634, ss. 1, 2; c. 875, s. 47; 1977, c. 561; c. 802, ss. 50.65-50.70; 1979, c. 838, s. 99; c. 862, ss. 1, 4, 5; c. 972, s. 4; c. 975, s. 1; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2; c. 980, ss. 3, 4; 1981 (Reg. Sess., 1982), c. 1282, s. 11; 1983, c. 467; c. 761, ss. 218, 219, 228, 229; c. 902, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1034, ss. 222, 232-235, 237; c. 1049, ss. 1-3; 1985, c. 348, s. 2; c. 479, ss. 189(a), 190, 191, 192(a), 194; c. 520, s. 2; c. 649, ss. 8, 10; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a); c. 824, s. 3; 1987 (Reg. Sess., 1988), c. 1061, s. 1; c. 1086, s. 22(a); c. 1108, s. 1; c. 1110, ss. 1-3; 1989, c. 717, ss. 1-6; c. 731, s. 1; c. 752, s. 41(a); c. 770, s. 31; c. 792, ss. 3.1-3.3; 1989 (Reg. Sess., 1990), c. 1077, ss. 2-5; 1991 (Reg. Sess., 1992), c. 766, s. 2; c. 900, ss. 52(a)-(c), 53(b); 1993, c. 321, ss. 74(c)-(e), 74.1(e), (f), 74.2(a); c. 531, s. 5; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(g)-(j), (m), (r); 1995, c. 507, ss. 7.22(a), 7.23(a), (b), 7.23A(a), (b); c. 509, ss. 74, 75; 1996, 2nd Ex. Sess., c. 18, s. 28.21(a); 1997-443, s. 33.22(a)-(d); 1998-153, s. 21(a); 1998-212, ss. 28.26(c), 28.27(a); 1999-237, s. 28.23(a); 2000-67, ss. 26.20(a)-(d); 2001-424, s. 32.22(a); 2002-126, ss. 28.8(a), 28.9(a)-(d); 2003-284, s. 30.17(a); 2003-359, ss. 3-6, 11; 2004-124, s. 31.17(a); 2004-147, s. 1; 2005-91, ss. 2, 3; 2005-276, s. 29.25(a); 2006-66, s. 22.18(a); 2006-172, s. 1.)

Editor's Note. —

Session Laws 2006-172, s. 1, added subsection (ooo), which was redesignated as subsection (ppp) at the direction of the Revisor of Statutes.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 22.18(a), effective July 1, 2006, added new subsection (ooo).

Session Laws 2006-172, s. 1, effective August 1, 2006, added subsection (ooo) (See Editor's note).

§ 135-5.1. (Effective until July 1, 2007) Optional retirement program for State institutions of higher education.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of participants in the Program. Participation in the Optional Retirement Program shall be limited to univer-

G.S. 135-5.1 is set out twice. See note.

sity personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program and who are:

(1) Administrators and faculty of The University of North Carolina with the rank of instructor or above;

(2) The President and employees of The University of North Carolina who are appointed by the Board of Governors on recommendation of the President pursuant to G.S. 116-11(4), 116-11(5), and 116-14 or who are appointed by the Board of Trustees of a constituent institution of The University of North Carolina upon the recommendation of the Chancellor pursuant to G.S. 116-40.22(b);

(3) Nonfaculty instructional and research staff who are exempt from the State Personnel Act, as defined by the provisions of G.S. 126-5(c1)(8); and

(4) Field faculty of the Cooperative Agriculture Extension Service, and tenure track faculty in North Carolina State University agriculture research programs who are exempt from the State Personnel Act and who are eligible for membership in the Teachers' and State Employees' Retirement System pursuant to G.S. 135-3(1), who in any of the cases described in this subsection (i) had been members of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought membership as required in subsection (b), below. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf.

(b) Participation in the Optional Retirement Program shall be governed as follows:

(1) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, Session Laws of 1971, are deemed automatically enrolled in the Program as established by this section.

(2) Eligible employees initially appointed on or after July 1, 1985, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into eligible service.

(3) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.

(4) No election by an eligible employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a contract or contracts or trust participation under the Program.

(5) If any participant having less than five years coverage under the Optional Retirement Program leaves the employ of The University of North Carolina and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retire-

G.S. 135-5.1 is set out twice. See note.

ment Program attributable to contributions of The University of North Carolina shall be forfeited and shall either (i) be refunded to The University of North Carolina and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund.

(c) Each employing institution shall contribute on behalf of each participant in the Optional Retirement Program an amount equal to a percentage of the participant's compensation as established from time to time by the General Assembly. Each participant shall contribute the amount which he or she would be required to contribute if a member of the Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant shall be made, consistent with Section 414(h) of the Internal Revenue Code, by salary reduction according to rules and regulations established by The University of North Carolina. Additional personal contributions may also be made by a participant by payroll deduction or salary reduction to an annuity or retirement income plan established pursuant to G.S. 116-17. Payment of contributions shall be made by the employing institution to the designated company or companies underwriting the annuities or the trustees for the benefit of each participant, and this employer contribution shall not be subject to any State tax if made under the Optional Retirement Program or, otherwise, by salary reduction.

(d) The Board of Governors of The University of North Carolina shall designate the company or companies from which contracts are to be purchased or the trustee responsible for the investment of contributions under the Optional Retirement Program, and shall approve the form and contents of such contracts or trust agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:

(1) The nature and extent of the rights and benefits to be provided by these contracts or trust agreement for participants and their beneficiaries;
(2) The relation of these rights and benefits to the amount of contributions to be made;
(3) The suitability of these rights and benefits to the needs of the participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and
(4) The ability of the designated company or companies underwriting the annuity contracts or trust agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

Notwithstanding the provisions of this subsection, no contractual relationship established under the Optional Retirement Program pursuant to the authority granted by Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this section.

(e) The Board of Governors of The University of North Carolina may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration.

(f) Any eligible employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within The University of North Carolina, and, in this event, he or she shall continue to participate in the Optional Retirement Program.

(g) No retirement benefit, death benefit, or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or The

G.S. 135-5.1 is set out twice. See note.

University of North Carolina, or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee selecting and participating in the Optional Retirement Program or with respect to any beneficiary of that employee. Benefits shall be payable to participants or their beneficiaries only by the designated company in accordance with the terms of the contracts or trust agreement. (1971, c. 338, s. 2; c. 916; 1973, c. 1425; 1977, c. 1070; 1985, c. 309; 1987 (Reg. Sess., 1988), c. 1086, s. 28; 2001-424, s. 32.27; 2003-356, s. 1.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as in effect July 1, 2007, see the following section, also numbered G.S. 135-5.1.

§ 135-5.1. (Effective July 1, 2007) Optional retirement program for The University of North Carolina.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of participants in the Program. Participation in the Optional Retirement Program shall be limited to University personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program and who are:

(1) Administrators and faculty of The University of North Carolina with the rank of instructor or above;
(2) The President and employees of The University of North Carolina who are appointed by the Board of Governors on recommendation of the President pursuant to G.S. 116-11(4), 116-11(5), and 116-14 or who are appointed by the Board of Trustees of a constituent institution of The University of North Carolina upon the recommendation of the Chancellor pursuant to G.S. 116-40.22(b);
(3) Nonfaculty instructional and research staff who are exempt from the State Personnel Act, as defined by the provisions of G.S. 126-5(c1)(8), and the faculty of the North Carolina School of Science and Mathematics; and
(4) Field faculty of the Cooperative Agriculture Extension Service, and tenure track faculty in North Carolina State University agriculture research programs who are exempt from the State Personnel Act and who are eligible for membership in the Teachers' and State Employees' Retirement System pursuant to G.S. 135-3(1), who in any of the cases described in this subsection (i) had been members of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought membership as required in subsection (b), below. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf.

(b) Participation in the Optional Retirement Program shall be governed as follows:

(1) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, Session Laws of 1971, are deemed automatically enrolled in the Program as established by this section.

G.S. 135-5.1 is set out twice. See note.

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(2) Eligible employees initially appointed on or after July 1, 1985, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into eligible service.

(3) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.

(4) No election by an eligible employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a contract or contracts or trust participation under the Program.

(5) If any participant having less than five years coverage under the Optional Retirement Program leaves the employ of The University of North Carolina and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program attributable to contributions of The University of North Carolina shall be forfeited and shall either (i) be refunded to The University of North Carolina and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund.

(c) Each employing institution shall contribute on behalf of each participant in the Optional Retirement Program an amount equal to a percentage of the participant's compensation as established from time to time by the General Assembly. Each participant shall contribute the amount which he or she would be required to contribute if a member of the Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant shall be made, consistent with Section 414(h) of the Internal Revenue Code, by salary reduction according to rules and regulations established by The University of North Carolina. Additional personal contributions may also be made by a participant by payroll deduction or salary reduction to an annuity or retirement income plan established pursuant to G.S. 116-17. Payment of contributions shall be made by the employing institution to the designated company or companies underwriting the annuities or the trustees for the benefit of each participant, and this employer contribution shall not be subject to any State tax if made under the Optional Retirement Program or, otherwise, by salary reduction.

(d) The Board of Governors of The University of North Carolina shall designate the company or companies from which contracts are to be purchased or the trustee responsible for the investment of contributions under the Optional Retirement Program, and shall approve the form and contents of such contracts or trust agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:

(1) The nature and extent of the rights and benefits to be provided by these contracts or trust agreement for participants and their beneficiaries;

G.S. 135-5.1 is set out twice. See note.

(2) The relation of these rights and benefits to the amount of contributions to be made;

(3) The suitability of these rights and benefits to the needs of the participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and

(4) The ability of the designated company or companies underwriting the annuity contracts or trust agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

Notwithstanding the provisions of this subsection, no contractual relationship established under the Optional Retirement Program pursuant to the authority granted by Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this section.

(e) The Board of Governors of The University of North Carolina may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration.

(f) Any eligible employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within The University of North Carolina, and, in this event, he or she shall continue to participate in the Optional Retirement Program.

(g) No retirement benefit, death benefit, or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or The University of North Carolina, or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee selecting and participating in the Optional Retirement Program or with respect to any beneficiary of that employee. Benefits shall be payable to participants or their beneficiaries only by the designated company in accordance with the terms of the contracts or trust agreement. (1971, c. 338, s. 2; c. 916; 1973, c. 1425; 1977, c. 1070; 1985, c. 309; 1987 (Reg. Sess., 1988), c. 1086, s. 28; 2001-424, s. 32.27; 2003-356, s. 1; 2006-172, ss. 2, 3.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 135-5.1.

Editor's Note. — Session Laws 2006-172, s. 4, provides: "Sections 2 and 3 of this act become effective July 1, 2007, and Section 3 of this act applies only to eligible persons who are employees as of July 1, 2007, or who are employed thereafter. The remainder of this act is effective when it becomes law."

Effect of Amendments. — Session Laws 2006-172, ss. 2 and 3, effective July 1, 2007, substituted "The University of North Carolina" for "State institutions of higher education" in the section catchline; and, in subsection (a), substituted "University" for "university" near the end of the second sentence, and added "and the faculty of the North Carolina School of Science and Mathematics" at the end of subdivision (a)(3). For applicability, see Editor's Note.

§ 135-8. Method of financing.

(a) Funds to Which Assets of Retirement System Credited. — All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of four funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, and the pension reserve fund.

(b) Annuity Savings Fund. — The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to any payments from the annuity savings fund shall be made as follows:

(1) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his actual compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State, from salaries other than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five per centum (5%) of actual compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of Article 2 of Chapter 135 of Volume 17 of the General Statutes, as amended, and with respect to members covered under G.S. 135-27, with such coverage retroactive to January 1, 1955, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the Board of Trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the Board of Trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955, and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under Article 2, Chapter 135 of Volume 17 of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required.

Notwithstanding the foregoing, effective July 1, 1963, with respect to the period of service commencing on July 1, 1963, and ending December 31, 1965, the rates of such deduction shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars ($4,800) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars ($4,800); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deductions shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars ($5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars ($5,600); and with respect to the period of service commencing July 1, 1967, and ending June 30, 1975, the rate of such deductions shall be five per centum (5%) of the portion of compensation not in excess of fifty-six hundred dollars ($5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars ($5,600). Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

Notwithstanding the foregoing, effective July 1, 1975, with respect to the period of service commencing on July 1, 1975, the rate of such deductions shall be six per centum (6%) of the compensation received by any member. Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

(2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Chapter. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon, to the individual account of the member from whose compensation said deduction was made.

(3) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the compensation that the State of North Carolina pays and shall transmit same to the State Retirement System monthly: Provided, that for the purpose of enabling the boards of education to make such payment, the tax-levying authorities are hereby authorized, empowered and directed to provide the necessary funds therefor. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this Chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.

(4) In addition to contributions deducted from compensation as hereinbefore provided, subject to the approval of the Board of Trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom, as provided in this Chapter. Such amounts so redeposited shall become a part of his accumulated contributions as if such amounts had initially been contributed within the calendar year of such redeposit. In no event, however, shall any member be permitted to redeposit any amount withdrawn after July 1, 1959, except as provided for in G.S. 135-4(e).

(5) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an

employer for the sole purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer. This approval shall be made prior to the purchase of the creditable service, is limited to a career total of six years for each member, and may be obtained in the following manner:

a. Approved leave of absence. — Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.

b. No educational leave policy. — Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.

c. Educational program prior to July 1, 1981. — Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus a fee to be determined by the Board of Trustees.

d. Employment in a charter school. — Notwithstanding subparagraph a. of this subdivision, where the employer grants an approved leave of absence for the member to be employed in a charter school or where the member's service is interrupted by employment in a charter school, authorized under Part 6A of Article 16 of Chapter 115C of the General Statutes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.

Payments required to be made by the member, the employer, or both under subparagraphs a or b are due by the 15th of the month following the month for which the service credit is allowed and payments made after the due date shall be assessed a penalty, in lieu of interest, of one percent (1%) per month or fraction thereof the payment is made beyond the due date; provided, that these payments shall be made prior to retirement and provided further, that if the member did not become a contributing member within 12 months after completing the educational program and failed to complete three years of subsequent membership service, except in the event of death or disability, any payment made by the member including penalty shall be refunded with regular interest thereon and the service credits cancelled prior to or at retirement.

(6) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this Chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund.

(b1) Pick Up of Employee Contributions. — Anything within this section to the contrary notwithstanding, effective July 1, 1982, an employer, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the employees as members under subsection (b) of this section with respect to the service of employees after June 30, 1982.

The members' contributions picked up by an employer shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the annuity savings fund and accumulated within the fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Member contributions picked up by an employer shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by his employer. This deduction, however, shall not reduce his compensation as defined in subdivision (7a) of G.S. 135-1. Picked up contributions shall be transmitted to the System monthly for the preceding month by means of a warrant drawn by the employer and payable to the Teachers' and State Employees' Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed. In the case of a failure to fulfill these conditions, the provisions of subsection (f)(3) of this section shall apply.

The pick up of employee contributions by an employer as provided for hereunder shall be equally applicable to participant contributions required under the optional retirement program as specified in G.S. 135-5.1(c).

(b2) Retroactive Adjustment in Compensation or an Underreporting of Compensation. — A member who is awarded backpay in cases of a denied promotional opportunity in which the aggrieved member is granted a promotion retroactively, or in cases in which an employer errs in the reporting of compensation, including the employee and employer contributions, the member and employer may make employee and employer contributions on the retroactive or additional compensation, after submitting clear and convincing evidence of the retroactive promotion or underreporting of compensation, as follows:

(1) Within 90 days of the denial of the promotion or the error in reporting, by the payment of employee and employer contributions that would have been paid; or

(2) After 90 days of the denial of the promotion or the error in reporting, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.

For members electing to make the employee contributions on the retroactive adjustment in compensation or on the underreported compensation, the member's employer, which granted the retroactive promotion or erred in underreporting compensation and contributions, shall make the required employer contributions. Nothing contained in this subsection shall prevent an employer from paying all or a part of the interest assessed on the employee contributions; and to the extent paid by the employer, the interest paid by the employer shall be credited to the pension accumulation fund; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the interest assessed on the employee contributions due.

In the event the retroactive adjustment in compensation or the underreported compensation is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5) the compensation the member would have received during the period shall be included in calculating the member's average final compensation only in the event the appropriate employee and employer contributions are paid on such compensation.

An employer error in underreporting compensation shall not include a retroactive increase in compensation that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5) for reasons other than a wrongfully denied promotional opportunity where the member is promoted retroactively.

(c) Annuity Reserve Fund. — The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this Chapter. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(d) Pension Accumulation Fund. — The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) On account of each member there shall be paid in the pension accumulation fund by employers an amount equal to a certain percentage of the actual compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation the normal contribution shall be two and fifty-seven one-hundredths percent (2.57%) for teachers, and one and fifty-seven one-hundredths percent (1.57%) for State employees, and the accrued liability contribution shall be two and ninety-four one-hundredths percent (2.94%) for teachers and one and fifty-nine one-hundredths percent (1.59%) of the salary of other State employees.

(2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the Board of Trustees, the actuary engaged by the Board to make each valuation required by this Chapter during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and

constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the Board of Trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(3) Immediately succeeding the first valuation the actuary engaged by the Board of Trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four percent (4%) of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate. Such rate shall be increased on the basis of subsequent valuations if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined. Upon certification by the actuary engaged by the Board of Trustees that the accrued liability contribution rate may be reduced without impairing the Retirement System, the Board of Trustees may cause the accrued liability contribution rate to be reduced.

(4) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total actual compensation of all members during the preceding year: Provided, however, that, subject to the provisions of subdivision (3) of this subsection the amount of each annual accrued liability contribution shall be at least three percent (3%) greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.

(5) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value as actuarially computed and approved by the Board of Trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.

(6) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employer shall be paid from the pension accumulation fund.

(7) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(e) Pension Reserve Fund. — The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(f) **(Effective until July 1, 2007)** Collection of Contributions. —

(1) The collection of members' contributions shall be as follows:

a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the Retirement System the contributions payable by such member as provided in this Chapter, and the employer shall draw his warrant for the amount so deducted, payable to the Teachers' and State Employees' Retirement System of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.

(2) The collection of employers' contributions shall be made as follows:

a. Upon the basis of each actuarial valuation provided herein there shall be prepared biennially and certified to the Department of Administration a statement of the total amount necessary for the ensuing biennium to the pension accumulation and expense funds, as provided under subsections (d) and (f) of this section, and these funds shall be handled and disbursed in accordance with Chapter 100, Public Laws of 1929, and amendments thereto (G.S. 143-1 et seq.), known as the Executive Budget Act.

b. Until the first valuation has been made and the rates computed as provided in subsection (d) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths percent (5.51%) of the payroll of all teachers and three and sixteen one-hundredths percent (3.16%) for other State employees.

c. Repealed by Session Laws 1993, c. 257, s. 13.

d. Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina shall pay the Board of Trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.

e. Each employer shall transmit monthly to the State Retirement System on account of each employee, who is a member of this System, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month.

(3) In the event the employee or employer contributions required under this section are not received by the date set by the Board of Trustees, the Board shall assess the employer with a penalty of 1% per month with a minimum penalty of twenty-five dollars ($25.00). If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer other than the State shall not have been received by

G.S. 135-8(f) is set out twice. See note.

the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer from any funds of the State shall be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default.

(f) **(Effective July 1, 2007)** Collection of Contributions. —

(1) The collection of members' contributions shall be as follows:

a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the Retirement System the contributions payable by such member as provided in this Chapter, and the employer shall draw his warrant for the amount so deducted, payable to the Teachers' and State Employees' Retirement System of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.

(2) The collection of employers' contributions shall be made as follows:

a. Upon the basis of each actuarial valuation provided herein there shall be prepared biennially and certified to the Department of Administration a statement of the total amount necessary for the ensuing biennium to the pension accumulation and expense funds, as provided under subsections (d) and (f) of this section, and these funds shall be handled and disbursed in accordance with the State Budget Act, Chapter 143C of the General Statutes.

b. Until the first valuation has been made and the rates computed as provided in subsection (d) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths percent (5.51%) of the payroll of all teachers and three and sixteen one-hundredths percent (3.16%) for other State employees.

c. Repealed by Session Laws 1993, c. 257, s. 13.

d. Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina shall pay the Board of Trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.

e. Each employer shall transmit monthly to the State Retirement System on account of each employee, who is a member of this System, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month.

(3) In the event the employee or employer contributions required under this section are not received by the date set by the Board of Trustees, the Board shall assess the employer with a penalty of 1% per month with a minimum penalty of twenty-five dollars ($25.00). If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer other than the State shall not have been received by

the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer from any funds of the State shall be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default.

(g) Merger of Annuity Reserve Fund and Pension Reserve Fund into Pension Accumulation Fund. — Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the Board of Trustees may determine, the annuity reserve fund and the pension reserve fund shall be merged into and become a part of the pension accumulation fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the Board of Trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System.

(h) Repealed by Session Laws 1965, c. 780, s. 1. (1941, c. 25, s. 8; c. 143; 1943, c. 207; 1947, c. 458, ss. 1, 2, 8; 1955, c. 1155, ss. 3-5; 1959, c. 513, s. 4; 1963, c. 687, ss. 4, 5; 1965, c. 780, s. 1; 1967, c. 720, ss. 12, 13; 1969, c. 1223, s. 13; 1971, c. 117, ss. 2, 10; 1975, c. 457, s. 5; c. 879, s. 46; 1977, c. 909; 1981, c. 636, s. 1; c. 1000, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 8; 1985, c. 539, ss. 1, 2; 1991, c. 585, s. 3; c. 718, s. 1; 1993, c. 257, s. 13; 1997-430, s. 11; 2003-359, s. 10; 2006-203, s. 73.)

Subsection (f) Set Out Twice. — The first version of subsection (f) set out above is effective until July 1, 2007. The second version of subsection (f) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act [July 1, 2007] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 73, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "the State Budget Act, Chapter 143C of the General Statutes" for "Chapter 100, Public Laws of 1929, and amendments thereto (G.S. 143-1 et seq.), known as the Executive Budget Act" in subdivision (f)(2)a.

ARTICLE 3.

Other Teacher, Employee Benefits; Child Health Benefits.

Part 2. Administrative Structure.

§ 135-39.5. Powers and duties of the Executive Administrator and Board of Trustees.

The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall have the following powers and duties:

(1) Supervising and monitoring of the Claims Processor.

(2) Providing for enrollment of employees in the Plan.

(3) Communicating with employees enrolled under the Plan.
(4) Communicating with health care providers providing services under the Plan.
(5) Making payments at appropriate intervals to the Claims Processor for benefit costs and administrative costs.
(6) Conducting administrative reviews under G.S. 135-39.7.
(7) Annually assessing the performance of the Claims Processor.
(8) Preparing and submitting to the Governor and the General Assembly cost estimates for the health benefits plan, including those required by Article 15 of Chapter 120 of the General Statutes.
(9) Recommending to the Governor and the General Assembly changes or additions to the health benefits program and health care cost containment programs, together with statements of financial and actuarial effects as required by Article 15 of Chapter 120 of the General Statutes.
(10) Working with State employee groups to improve health benefit programs.
(11) Repealed by Session Laws 1985, c. 732, s. 9.
(12) Determining basis of payments to health care providers, including payments in accordance with G.S. 58-50-56. The Comprehensive Major Medical Plan and optional plans and programs adopted pursuant to G.S. 135-39.5B shall comply with G.S. 58-3-225.
(13) Requiring bonding of the Claims Processor in the handling of State funds.
(14) Repealed by Session Laws 1985, c. 732, s. 7.
(15) In case of termination of the contract under G.S. 135-39.5A, to select a new Claims Processor, after competitive bidding procedures approved by the Department of Administration.
(16) Notwithstanding the provisions of Part 3 of this Article, to formulate and implement cost-containment measures which are not in direct conflict with that Part.
(17) Implementing pilot programs necessary to evaluate proposed cost containment measures which are not in direct conflict with Part 3 of this Article, and expending funds necessary for the implementation of such programs.
(18) Authorizing coverage for alternative forms of care not otherwise provided by the Plan in individual cases when medically necessary, medically equivalent to services covered by the Plan, and when such alternatives would be less costly than would have been otherwise.
(19) Establishing and operating a hospital and other provider bill audit program and a fraud detection program.
(20) Determining administrative and medical policies that are not in direct conflict with Part 3 of this Article upon the advice of the Claims Processor and upon the advice of the Plan's consulting actuary when Plan costs are involved.
(21) Supervising the payment of claims and all other disbursements under this Article, including the recovery of any disbursements that are not made in accordance with the provisions of this Article.
(22) Implementing and administering a program of long-term care benefits pursuant to Part 4 of this Article.
(23) Implementing and administering a program of child health insurance benefits pursuant to Part 5 of this Article.
(24) Implementing and administering a case management and disease management program.
(25) Implementing and administering a pharmacy benefit management program through a third-party contract awarded after receiving competitive quotes.

(26) Increasing annually the amount of the annual deductible and annual aggregate maximum deductible. The increase shall be established by determining the ratio of the CPI-Medical Index to such index one year earlier. If the ratio indicates an increase in the CPI-Medical Index, then the amount of the annual deductible and annual aggregate maximum deductible may be increased by not more than the percentage increase in the CPI-Medical Index. As used in this subdivision, the term "CPI-Medical Index" means the U.S. Consumer Price Index for All Urban Consumers for Total Medical Care.

(27) The Executive Administrator may establish pilot programs to measure potential cost savings and improvements in patient care available through local, provider-driven medical management. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 2; 1985, c. 732, ss. 7, 9, 23, 24, 50; 1985 (Reg. Sess., 1986), c. 1020, ss. 3, 20; 1987, c. 857, ss. 6, 7; 1987 (Reg. Sess., 1988), c. 1091, s. 5; 1989, c. 752, s. 22(a); 1991, c. 427, s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 10.3; 1997-468, s. 2; 1997-519, s. 3.15; 1998-1, s. 4(c); 2000-141, s. 3; 2001-253, ss. 1(a), 1(q); 2001-487, s. 85.5; 2006-249, s. 4(b).)

Effect of Amendments. — Session Laws 2006-249, s. 4(b), effective July 1, 2006, rewrote the last sentence in subdivision (12).

§ 135-39.5B. Optional plans.

(a) The Executive Administrator and Board of Trustees may, after consultation with the Committee on Employee Hospital and Medical Benefits, provide for optional prepaid hospital and medical benefits plans. Benefits offered under such optional plans shall be comparable to those offered under the Plan. The amounts of State funds contributed for such optional plans shall not be more than the amounts contributed for each person eligible under G.S. 135-40.2 on a noncontributory Employee Only basis, with the person selecting an optional plan paying any excess, if necessary. The amount of State funds contributed to such optional plans shall also not exceed the amount of an optional plan's cost for Employee Only coverage. The Executive Administrator and Board of Trustees are authorized to assess and collect fees from participating optional plans provided by this section for administrative purposes and for risk management purposes. Such fees may be based upon the enrollees' risk factors and the number and types of contracts enrolled by each participating optional plan, and may be collected by the Plan in a manner prescribed by the Executive Administrator and Board of Trustees. In no instance shall benefits be paid under Part 3 of this Article for persons enrolled in an optional prepaid hospital and medical benefit plan authorized under this section on and after the effective date of enrollment in the optional prepaid plan, except in cases of continuous hospital confinement approved by the Executive Administrator.

(b) The Executive Administrator and Board of Trustees may, after consulting with the Committee on Employee Hospital and Medical Benefits, adopt an arrangement for an optional hospital and medical benefits program other than the one specified in subsection (a) of this section. The optional program may include one that is purchased or underwritten by the State and may be a PPO or other type optional program. Optional programs under this section are not subject to benefits and cost-sharing requirements under G.S. 135-40.5 through G.S. 135-40.9, except that if a pharmacy benefit is not provided under the optional program, the pharmacy benefit under G.S. 135-40.59(g) shall apply. The Executive Administrator and Board of Trustees may set premium rates for coverage under an optional program on a partially contributory basis, provided that the amounts of State funds contributed for coverage on a partially contributory basis shall not be more than the Plan's total noncontributory premium for Employee Only coverage, with the person selecting the optional program coverage paying the balance of the partially contributory premium not paid by the Plan. The amount of State funds contributed for purchased optional programs shall not exceed the amount of a purchased optional program's cost for Employee Only coverage. Contracts for an optional program under this subsection are not subject to Article 3 of Chapter 143 of the General Statutes. In no instance shall benefits be paid under Part 3 of this Article for persons enrolled in an optional prepaid hospital and medical benefits program authorized under this subsection on and after the effective date of enrollment in the optional prepaid plan, except in cases of continuous hospital confinement approved by the Executive Administrator. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 37; 1985 (Reg. Sess., 1986), c. 1020, s. 6; 1987, c. 857, s. 8; 1991, c. 427, s. 4; c. 636, s. 15; 2005-276, s. 29.33(a); 2006-249, s. 4(a).)

Effect of Amendments. —

Session Laws 2006-249, s. 4(a), effective July 1, 2006, in subsection (b), added "except that if a pharmacy benefit is not provided under the optional program, the pharmacy benefit under G.S. 135-40.59(g) shall apply" at the end of the third sentence, and added the last sentence.

Part 3. Comprehensive Major Medical Plan.

§ 135-40. Undertaking.

Local Modification. — Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and town of Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32.

§ 135-40.1. General definitions.

Local Modification. — Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and town of Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32.

Editor's Note. —

Session Laws 2006-249, s. 5 provides: "The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan ("Plan") may admit up to four additional local government employers to participate in the Plan upon application in accordance with G.S. 135-40.1(6), as enacted in Section 31.26 of Session Laws 2004-424. The Executive Administrator and Board of Trustees shall have discretion in selecting the additional local government employers based on sound criteria developed by the Executive Administrator to evaluate the financial impact on the operations of the Plan. The Executive Administrator shall report the proposed selections and the criteria used in making the selections to the Committee on Employee Hospital and Medical Benefits prior to submitting the selections to the Board of Trustees for its approval. The local government employers selected by the Executive Administrator and the Board of Trustees in accordance with this section shall be in addition to local government employers participating in the Plan on July 1, 2006. In admitting local government employers into the Plan, the Executive Administrator shall ensure compliance with the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C.S. § 1003(b)."

§ 135-40.2. Eligibility.

(a) The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-40.3:

(1) All permanent full-time employees of an employing unit who meet the following conditions:
  a. Paid from general or special State funds, or
  b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage.

Employees of State agencies, departments, institutions, boards, and commissions not otherwise covered by the Plan who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

(1a) Permanent hourly employees as defined in G.S. 126-5(c4) who work at least one-half of the workdays of each pay period.

(2) Retired teachers, State employees, members of the General Assembly, and retired State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985. For employees first hired on and after October 1, 2006, and members of the General Assembly first taking office on and after February 1, 2007, future coverage as retired employees and retired members of the General Assembly is subject to a requirement that the future retiree have 20 or more years of retirement service credit in order to be covered by the provisions of this subdivision.

(2a) Surviving spouses of:
  a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and
  b. Deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.

(3) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(b).

(3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(4) Members of the General Assembly.

(5) Notwithstanding the provisions of subsection (e) of this section, employees on official leave of absence while completing a full-time program in school administration in an approved program as a Principal Fellow in accordance with Article 5C of Chapter 116 of the General Statutes.

(6) Notwithstanding the provisions of G.S. 135-40.11, employees formerly covered by the provisions of this section, other than retired employees, who have been employed for 12 or more months by an employing unit and whose jobs are eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities, provided the employees were covered by the Plan at the time of separation from service resulting from a job elimination. Employees covered by this subsection shall be covered for a period of up to 12 months following a separation from service because of a job elimination.

(7) Any member enrolled pursuant to subdivision (1) or (1a) of this subsection who is on approved leave of absence with pay or receiving workers' compensation.

(8) Employees on approved Family and Medical Leave.

(a1) Repealed by Session Laws 2000-141, s. 6(b), effective August 2, 2000, and by Session Laws 2000-184, s. 1(b), effective August 1, 2000.

(a2) A school employee in a job-sharing position as defined in G.S. 130-40.3. If these employees elect to participate in the Plan, the employing unit shall pay fifty percent (50%) of the Plan's total noncontributory premiums. Individual employees shall pay the balance of the total noncontributory premiums not paid by the employing unit.

(a3) Subject to the provisions of G.S. 135-40.3, employees and members of the General Assembly with 10 but less than 20 years of retirement service credit shall be eligible for coverage under the Plan on a partially contributory basis, provided the employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007. For such future retirees, the State shall pay fifty percent (50%) of the Plan's total noncontributory premiums. Individual retirees shall pay the balance of the total noncontributory premiums not paid by the State.

(b) The following person shall be eligible for coverage under the Plan, on a fully contributory basis, subject to the provisions of G.S. 135-40.3:

(1) Repealed by Session Laws 1983, c. 761, s. 255.

(2) Former members of the General Assembly who enroll before October 1, 1986.

(2a) For enrollments after September 30, 1986, former members of the General Assembly if covered under the Plan at termination of membership in the General Assembly. To be eligible for coverage as a former member of the General Assembly, application must be made within 30 days of the end of the term of office. Only members of the General Assembly covered by the Plan at the end of the term of office are eligible. If application is not made within the specified time period, the member forfeits eligibility.

(3) Surviving spouses of deceased former members of the General Assembly who enroll before October 1, 1986.

(3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(3b) For enrollments after September 30, 1986, surviving spouses of deceased former members of the General Assembly, if covered under the Plan at the time of death of the former member of the General Assembly.

(4) All permanent part-time employees (designated as half-time or more) of an employing unit who meets the conditions outlined in subdivision (a)(1)a above, and who are not covered by the provisions of G.S. 135-40.2(a)(1).

(4a) Repealed by Session Laws 1997-512, s. 22.

(5) The spouses and eligible dependent children of enrolled teachers, State employees, retirees, former members of the General Assembly, former employees covered by the provisions of G.S. 135-40.2(a)(6), Disability Income Plan beneficiaries, enrolled continuation members, and members of the General Assembly. Spouses of surviving dependents are not eligible, nor are dependent children if they were not covered at the time of the member's death. Surviving spouses may cover their dependent children provided the children were enrolled at the time of the member's death or enroll within 30 days of the member's death.

(6) Blind persons licensed by the State to operate vending facilities under contract with the Department of Health and Human Services, Division of Services for the Blind and its successors, who are:

a. Operating such a vending facility;

b. Former operators of such a vending facility whose service as an operator would have made these operators eligible for an early or service retirement allowance under Article 1 of this Chapter had they been members of the Retirement System; and

c. Former operators of such a vending facility who attain five or more years of service as operators and who become eligible for and receive a disability benefit under the Social Security Act upon cessation of service as an operator.

Spouses, dependent children, surviving spouses, and surviving dependent children of such members are not eligible for coverage.

(7) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(j).

(8) Surviving spouses of deceased retirees and surviving spouses of deceased teachers, State employees, and members of the General Assembly provided the death of the former Plan member occurred after September 30, 1986, and the surviving spouse was covered under the Plan at the time of death.

(9) Repealed by Session Laws 1987, c. 857, s. 11.1.

(10) Any eligible dependent child of the deceased retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, provided the child was covered at the time of death of the retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, (or was in posse at the time and is covered at birth under this Part), or was covered under the Plan on September 30, 1986. An eligible surviving dependent child can remain covered until age 19, or age 26 if a full-time student, or indefinitely if certified as incapacitated under G.S. 135-40.1(3)b.

(11) Repealed by Session Laws 2000-141, s. 6(b), effective August 2, 2000, and by Session Laws 2000-184, s. 1(b), effective August 1, 2000.

(11a) Retired teachers, State employees, and members of the General Assembly with less than 10 years of retirement service credit, provided the teachers and State employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007.

(12) Notwithstanding the provisions of G.S. 135-40.11, former employees covered by the provisions of G.S. 135-40.2(a)(6), and their spouses and eligible dependent children who were covered by the Plan at the time of the former employees' separation from service pursuant to G.S. 135-40.2(a)(6), following expiration of the former employees' coverage provided by G.S. 135-40.2(a)(6). Election of coverage under this subdivision shall be made within 90 days after the termination of coverage provided under G.S. 135-40.2(a)(6).

(13) Firemen, rescue squad workers, and members of the national guard, their eligible spouses, and eligible dependent children.

(c) No person shall be eligible for coverage as a dependent if eligible as an employee or retired employee, except when a spouse is eligible on a fully contributory basis. In addition, no person shall be eligible for coverage as a dependent of more than one employee or retired employee at the same time.

(d) Former employees who are receiving disability retirement benefits or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes, provided the former employee has at least five years of retirement membership service, shall be eligible for the benefit provisions of this Plan, as set forth in this Part, on a noncontributory basis. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits or disability income benefits pursuant to Article 6 of this Chapter.

(e) Employees on official leave of absence without pay may elect to continue this group coverage at group cost provided that they pay the full employee and employer contribution through the employing unit during the leave period.

(f) For the support of the benefits made available to any member vested at the time of retirement, their spouses or surviving spouses, and the surviving spouses of employees who are receiving a survivor's alternate benefit under G.S. 135-5(m) of those associations listed in G.S. 135-27(a), licensing and examining boards under G.S. 135-1.1, the North Carolina Art Society, Inc., and the North Carolina Symphony Society, Inc., each association, organization or board shall pay to the Plan the full cost of providing these benefits under this section as determined by the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan. In addition, each association, organization or board shall pay to the Plan an amount equal to the cost of the benefits provided under this section to presently retired members of each association, organization or board since such benefits became available at no cost to the retired member.

(g) An eligible surviving spouse and any eligible surviving dependent child of a deceased retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary shall be eligible for group benefits under this section without waiting periods for preexisting conditions provided coverage is elected within 90 days after the death of the former plan member. Coverage may be elected at a later time, but will be subject to the 12-month waiting period for preexisting conditions and will be effective the first day of the month following receipt of the application.

(h) No person shall be eligible for coverage as an employee or retired employee or as a dependent of an employee or retired employee upon a finding by the Executive Administrator or Board of Trustees or by a court of competent jurisdiction that the employee or dependent knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan. The Executive Administrator and Board of Trustees may make an exception to the provisions of this subsection when persons subject to this subsection have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subsection shall be construed to obligate the Executive Administrator and Board of Trustees to make an exception as allowed for under this subsection.

(i) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service, or an employee on leave without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by paying one hundred percent (100%) of the cost. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, s. 29(a)-(*l*); 1987, c. 738, ss. 29(n), 36(a), 36(b); c. 809, ss. 3, 4; c. 857, ss. 11(a), 11.1, 11.2, 12; 1989, c. 752, s. 22(e), (f); 1989 (Reg. Sess., 1990), c. 1074, s. 22(a); 1993, c. 321, s. 85(b); 1995, c. 278, s. 1; c. 507, ss. 7.21(a)-(c), 7.28(a)-(c); 1997-443, s. 11A.118(a); 1997-512, ss. 17, 19-27; 1999-237, s. 28.29(f); 2000-141, ss. 6(a), (b); 2000-184, ss. 1(a),(b), 3; 2001-487, s. 86(a); 2002-174, s. 4; 2003-358, s. 4; 2004-124, s. 31.21(b); 2004-199, s. 34(b); 2005-276, s. 29.31(e); 2006-174, ss. 1, 2, 3.)

Local Modification. — Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and town of Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32.

Effect of Amendments. —

Session Laws 2006-174, ss. 1 through 3, effective July 1, 2006, added the last sentence in subdivision (a)(2); added subsection (a3); and added subdivision (b)(11a).

§ 135-40.3. Effective dates of coverage.

Local Modification. — Bladen: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Cherokee: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Rutherford: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Washington: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; Wilkes: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32; and town of Forest City: 2004-124, s. 31.26, as amended by 2005-276, s. 29.32.

§ 135-40.4. Benefits in general.

Editor's Note. —

Session Laws 2006-249, s. 1(a), expiring July 1, 2009, provides: "Cost-Saving Initiatives. — Coverage of Over-the-Counter Medications. — Notwithstanding any other provision of law to the contrary, the Executive Administrator and Board of Trustees may authorize coverage for over-the-counter medications as recommended by the Plan's pharmacy and therapeutics committee. In approving for coverage one or more over-the-counter medications, the Executive Administrator and Board of Trustees shall ensure that each recommended over-the-counter medication has been analyzed to ensure medical effectiveness and Plan member safety. The analysis shall also address the financial impact on the Plan. The Executive Administrator and Board of Trustees may impose a co-payment to be paid by each covered individual for each packaged over-the-counter medication. The Executive Administrator and Board of Trustees may adopt policies establishing limits on the amount of coverage available for over-the-counter medications for each covered individual over a 12-month period. Prior to implementing policy and co-payment changes authorized under this section, the Executive Administrator and Board of Trustees shall submit the proposed policies and co-payments to the Committee on Employee Hospital and Medical Benefits for its review."

Session Laws 2006-249, s. 1(b), expiring July 1, 2009, provides: "Incentive Programs. — For the purposes of helping Plan members to achieve and maintain a healthy lifestyle without impairing patient care, and to increase cost effectiveness in Plan coverage, the Executive Administrator and Board of Trustees may adopt programs offering incentives to Plan members to encourage changes in member behavior or lifestyle designed to improve member health and promote cost-efficiency in the Plan. Participation in one or more incentive programs is voluntary on the part of the Plan member. Before adopting an incentive program, the Executive Administrator and Board of Trustees shall conduct an impact analysis on the proposed incentive program to determine (i) whether the program is likely to result in significant member satisfaction, (ii) that it will not adversely affect quality of care, and (iii) whether it is likely to result in significant cost savings to the Plan. The impact analysis may be conducted by a committee of the Plan, in conjunction with the Plan's consulting actuary, provided that the Plan's medical director participates in the analysis. An approved incentive plan may provide for a waiver of deductibles, co-payments, and coinsurance required under this Article in order to determine the effectiveness of the incentive program in promoting healthy lifestyles for members and increasing cost-effectiveness to the Plan. The Executive Administrator and Board of Trustees shall, before implementing incentive programs authorized under this section, submit the proposed programs to the Committee on Employee Hospital and Medical Benefits for review."

Session Laws 2006-249, s. 6, provides in part: "Section 1 of this act expires July 1, 2009."

CASE NOTES

Diagnostic Related Grouping Based Reimbursement System. — When insurers and employers who were ordered by the Industrial Commission to pay certain amounts to hospitals sought relief under G.S. 135-40.7(8), claiming they had been required to pay amounts for services greater than that which people not covered under the State Teachers' and Employees' Health Plan would have been required to pay, they were not entitled to relief because G.S. 135-40.4 authorized a diagnostic-related grouping system for the reimbursement of hospitals, such as that under which the amounts the employers and insurers were ordered to pay were approved. Carolinas Med. Ctr. v. Emplrs & Carriers Listed in Exhibit A, 172 N.C. App. 549, 616 S.E.2d 588, 2005 N.C. App. LEXIS 1773 (2005).

§ 135-40.5. Benefits not subject to deductible or coinsurance.

(a) Repealed by Session Laws 1985, c. 192, s. 5.

(b) Repealed by Session Laws 1991, c. 427, s. 20.

(c) Preadmission Testing. — The Plan will pay one hundred percent (100%) of reasonable and customary charges for diagnostic, laboratory and x-ray examinations performed on an outpatient basis.

(d) Repealed by Session Laws 2001-253, s. 1(d), effective July 1, 2001.

(e) Routine Diagnostic Examinations. — The Plan will pay one hundred percent (100%) of allowable charges for routine diagnostic examinations and tests, including breast, colon, rectal, and prostate exams, X rays, blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for covered individuals age 50 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. The Plan will pay one hundred percent (100%) of allowable charges for mammograms once per year for covered individuals age 40 years and over, and not more often than once every three years for covered individuals to age 40 years, when such charges are incurred in a medically supervised facility. Routine diagnostic examinations and tests covered under this subsection also include examinations and tests for the screening for the early detection of cervical cancer. The coverage shall be in accordance with the most recently published American Cancer Society guidelines or guidelines adopted by the North Carolina Advisory Committee on Cancer Coordination and Control for any covered female. For the purposes of this subsection, "examinations and laboratory tests for the screening for the early detection of cervical cancer" means conventional PAP smear screening, liquid-based cytology, and human papilloma virus (HPV) detection methods for women with equivocal findings on cervical cytologic analysis that are subject to the approval of and have been approved by the United States Food and Drug Administration. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities, or to comply with governmental licensing requirements. The maximum amount payable under this subsection for a covered individual is one hundred fifty dollars ($150.00) per fiscal year.

(f) Immunizations. — The Plan will pay one hundred percent (100%) of allowable charges for immunizations for the prevention of contagious diseases as generally accepted medical practices would dictate when directed by an attending physician.

(g) Prescription Drugs. — The Plan's allowable charges for prescription legend drugs to be used outside of a hospital or skilled nursing facility are to be determined by the Plan's Executive Administrator and Board of Trustees. The Plan will pay allowable charges for each outpatient prescription drug less a copayment to be paid by each covered individual equal to the following amounts: pharmacy charges up to ten dollars ($10.00) for each generic prescription, twenty five dollars ($25.00) for each preferred branded prescription, and forty dollars ($40.00) for each preferred branded prescription with a generic equivalent drug, and fifty dollars ($50.00) for each nonpreferred branded or generic prescription.

Allowable charges shall not be greater than a pharmacy's usual and customary charge to the general public for a particular prescription. Prescriptions shall be for no more than a 34-day supply for the purposes of the copayments paid by each covered individual. By accepting the copayments and any remaining allowable charges provided by this subsection, pharmacies shall not balance bill an individual covered by the Plan. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though a prescription is not required. The Plan may use a pharmacy benefit manager to help manage the Plan's outpatient prescription drug coverage. In managing the Plan's outpatient prescription drug benefits, the Plan and its pharmacy benefit manager shall not provide coverage for erectile dysfunction, growth hormone, antiwrinkle, weight loss, and hair growth drugs unless such coverage is medically necessary to the health of the member. The Plan and its pharmacy benefit manager shall not provide coverage for growth hormone and weight loss drugs and antifungal drugs for the treatment of nail fungus and botulinium toxin without approval in advance by the pharmacy benefit manager. Any formulary used by the Plan's Executive Administrator and pharmacy benefit manager shall be an open formulary. Plan members shall not be assessed more than two thousand five hundred dollars ($2,500) per person per fiscal year in copayments required by this subsection. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 7; 1985, c. 192, ss. 5, 9, 12; c. 732, ss. 16-18; 1985 (Reg. Sess., 1986), c. 1020, ss. 10, 20; 1987, c. 857, s. 14; 1991, c. 427, ss. 13, 20; 1995, c. 507, s. 7.24(a); 1999-237, s. 28.28(b); 2000-141, s. 1; 2000-184, s. 2; 2001-253, ss. 1(d), 1(e); 2003-186, s. 5(a); 2005-276, s. 29.31(a); 2006-249, s. 2(a).)

Editor's Note. —

Session Laws 2006-249, s. 1(a), expiring July 1, 2009, provides: "Cost-Saving Initiatives. — Coverage of Over-the-Counter Medications. — Notwithstanding any other provision of law to the contrary, the Executive Administrator and Board of Trustees may authorize coverage for over-the-counter medications as recommended by the Plan's pharmacy and therapeutics committee. In approving for coverage one or more over-the-counter medications, the Executive Administrator and Board of Trustees shall ensure that each recommended over-the-counter medication has been analyzed to ensure medical effectiveness and Plan member safety. The analysis shall also address the financial impact on the Plan. The Executive Administrator and Board of Trustees may impose a co-payment to be paid by each covered individual for each packaged over-the-counter medication. The Executive Administrator and Board of Trustees may adopt policies establishing limits on the amount of coverage available for over-the-counter medications for each covered individual over a 12-month period. Prior to implementing policy and co-payment changes authorized under this section, the Executive Administrator and Board of Trustees shall submit the proposed policies and co-payments to the Committee on Employee Hospital and Medical Benefits for its review."

Session Laws 2006-249, s. 1(b), provides: "Incentive Programs. — For the purposes of helping Plan members to achieve and maintain a healthy lifestyle without impairing patient care, and to increase cost effectiveness in Plan coverage, the Executive Administrator and Board of Trustees may adopt programs offering incentives to Plan members to encourage changes in member behavior or lifestyle designed to improve member health and promote cost-efficiency in the Plan. Participation in one or more incentive programs is voluntary on the part of the Plan member. Before adopting an incentive program, the Executive Administrator and Board of Trustees shall conduct an impact analysis on the proposed incentive program to determine (i) whether the program is likely to result in significant member satisfaction, (ii) that it will not adversely affect quality of care, and (iii) whether it is likely to result in significant cost savings to the Plan. The impact analysis may be conducted by a committee of the Plan, in conjunction with the Plan's consulting actuary, provided that the Plan's medical director participates in the analysis. An approved incentive plan may provide for a waiver of deductibles, co-payments, and coinsurance required under this Article in order to determine the effectiveness of the incentive program in promoting healthy lifestyles for members and increasing cost-effectiveness to the Plan. The Executive Administrator and Board of Trustees shall, before implementing incentive programs authorized under this section, submit the proposed programs to the Committee on Employee Hospital and Medical Benefits for review."

Effect of Amendments. —

Session Laws 2006-249, s. 2(a), effective July 1, 2006, in the first paragraph of subsection (g), inserted "preferred" preceding "branded prescription" twice, and substituted "each nonpreferred branded or generic prescription" for "each branded or generic prescription not on a formulary used by the Plan" at the end of the paragraph.

CASE NOTES

Cited in Carolinas Med. Ctr. v. Emplrs & Carriers Listed in Exhibit A, 172 N.C. App. 549, 616 S.E.2d 588, 2005 N.C. App. LEXIS 1773 (2005).

§ 135-40.6A. Prior approval procedures.

(a) The Executive Administrator and Board of Trustees shall establish procedures to require prior medical approvals for the following services:

(1) Home Health Care Agency Services in accordance with G.S. 135-40.6(8)c.
(2) Repealed by Session Laws 1991, c. 427, s. 31.
(3) Ambulance Transport over 50 miles in accordance with G.S. 135-40.6(8)d.
(4) Oral Surgery in accordance with G.S. 135-40.6(5)c.
(5) Durable Medical Equipment (rental and purchase) in accordance with G.S. 135-40.6(8)e.
(6) Covered Transplants in accordance with G.S. 135-40.6(5)a.
(7) Repealed by Session Laws 1997-512, s. 38(b).
(8) Hospice Services in accordance with G.S. 135-40.6(8)q.
(9) Phase II clinical trials in accordance with G.S. 135-40.1(1b). Decisions pursuant to this section must be rendered by the Plan within 30 days after receipt of all medical documentation requested by the Plan.

(b) The Executive Administrator and Board of Trustees may establish procedures to require prior medical approvals for the following services:

(1) Skilled Nursing Facility Care.
(2) Private Duty Nursing.
(3) Speech Therapy (unless rendered in an inpatient hospital).
(4) Physical Therapy (in the home).
(5), (6) Repealed by Session Laws 1997-512, s. 39.
(7) Surgical Procedures:
    a. Blepharoplasties
    b. Surgery for Hermaphroditism
    c. Excision of Keloids
    d. Reduction Mammoplasty
    e. Morbid Obesity Surgery
    f. Penile Prosthesis
    g. Excision of Gynecomastia
    h. Cochlear Implants
    i. Revision of the Nasal Structure
    j. Abdominoplasty
    k. Fimbrioplasty
    l. Tubotubal Anastomasis
    m. Varicose Vein Surgery.
(8) Subcutaneous injection of "filling" material (Example: zyderm, silicone).
(8a) Botulinium toxin.
(9) Suction Lipectomy.
(10) Outpatient prescription drugs requiring prospective review under the Plan's pharmacy benefit management program.

(11) Outpatient prescription drugs for growth hormone, weight loss, and antifungal drugs for the treatment of nail fungus.

(12) Bone Anchored Hearing Aids (BAHA) surgically implanted for the treatment of hearing loss.

(c) No procedure for prior approval may be established except as provided by this Article as it may be amended from time to time. (1985 (Reg. Sess., 1986), c. 1020, s. 22; 1987, c. 857, s. 19; 1989, c. 770, s. 33; 1991, c. 427, ss. 31, 39; 1997-512, ss. 6, 38(b), 39; 1998-212, s. 28.29(d); 2000-141, s. 4; 2001-253, s. 1(l); 2006-249, s. 2(b).)

Effect of Amendments. — Session Laws 2006-249, s. 2(b), effective July 1, 2006, added subdivision (b)(12).

§ 135-40.7. General limitations and exclusions.

CASE NOTES

No Legal Obligation to Pay. — When insurers and employers who were ordered by the Industrial Commission to pay certain amounts to hospitals sought relief under G.S. 135-40.7(8), claiming they had been required to pay amounts for services greater than that which people not covered under the State Teachers' and Employees' Health Plan would have been required to pay, they were not entitled to relief because G.S. 135-40.4 authorized a diagnostic-related grouping system for the reimbursement of hospitals, such as that under which the amounts the employers and insurers were ordered to pay were approved. Carolinas Med. Ctr. v. Emplrs & Carriers Listed in Exhibit A, 172 N.C. App. 549, 616 S.E.2d 588, 2005 N.C. App. LEXIS 1773 (2005).

§ 135-40.11. Cessation of coverage.

CASE NOTES

Cited in Carolinas Med. Ctr. v. Emplrs & Carriers Listed in Exhibit A, 172 N.C. App. 549, 616 S.E.2d 588, 2005 N.C. App. LEXIS 1773 (2005).

§ 135-40.13A. Liability of third person; right of subrogation; right of first recovery.

(a) The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery pursuant to G.S. 135-40.13(g). If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. The Plan has a lien, for not more than the value of claims paid related to the liability of the third party, on any damages subsequently recovered against the liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages recovered by the Plan member, exclusive of the Plan member's reasonable costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the Plan as to the reasonable cost of collection is conclusive and is not a "final agency decision" for purposes of a contested case under Chapter 150B of the General Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is represented by an attorney, and the attorney shall disburse proceeds pursuant to this section. (2004-124, s. 31.25; 2006-264, s. 66(a).)

Effect of Amendments. — Session Laws 2006-264, s. 66(a), effective August 27, 2006, and applicable to payments made by the Plan after July 20, 2004, for which reimbursement is sought on or after August 27, 2006, rewrote the section.

ARTICLE 4.

Consolidated Judicial Retirement Act.

§ 135-65. Post-retirement increases in allowances.

(a) Commencing with the post-retirement adjustment, effective July 1, 1974, all retirement allowances payable under the provisions of this Article shall be adjusted annually in accordance with the provisions of G.S. 135-5(o).

(b) Increases in Benefits Paid to Members Retired prior to July 1, 1978. — Notwithstanding subsection (a) of this section, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in subsection (a) of this section, shall be the current maximum four percent (4%) plus an additional one percent (1%) to a total of five percent (5%) for the year 1979 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(c) Increases in Benefits Paid to Members Retired prior to July 1, 1979. — Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, shall be the current maximum four percent (4%) plus an additional six percent (6%) to a total of ten percent (10%) for the year 1980-81 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(d) Increases in Benefits Paid to Members Retired Prior to July 1, 1982. — From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by four percent (4%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (a) of this section.

(e) Increase in Benefits Paid to Members Retired on or before July 1, 1983. — From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by eight percent (8%) of the allowance payable on July 1, 1983.

(f) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984. Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(g) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985. Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985 and June 30, 1986.

(h) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986. Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(i) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987. Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(j) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988. Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(k) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(*l*) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July

1, 1989. Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(m) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(n) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(o) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(p) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(q) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(r) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(s) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(t) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(u) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by two and six-tenths percent (2.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of two and six-tenths percent (2.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(v) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(w) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(x) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(y) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2003, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2003, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2003, and June 30, 2004.

(z) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005.

(aa) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2005, and June 30, 2006. (1973, c. 640, s. 1; 1979, c. 838, s. 104; 1979, 2nd Sess., c. 1137, s. 69; 1983, c. 761, s. 221; 1983 (Reg. Sess., 1984), c. 1034, s. 224; 1985, c. 479, s. 189(b); 1985 (Reg. Sess., 1986), c. 1014, s. 49(b); 1987, c. 738, s. 27(b); 1987 (Reg. Sess., 1988), c. 1086, s. 22(b); 1989, c. 752, s. 41(b); 1989 (Reg. Sess., 1990), c. 1077, ss. 8, 9; 1991 (Reg. Sess., 1992), c. 900, s. 53(c); 1993, c. 321, s. 74(f); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(n); 1995, c. 507, s. 7.22(b); 1996, 2nd Ex. Sess., c. 18, s. 28.21(b); 1997-443, s. 33.22(e); 1998-153, s. 21(b); 1999-237, s. 28.23(b); 2000-67, s. 26.20(e); 2001-424, s. 32.22(b); 2002-126, s. 28.8(c); 2003-284, s. 30.17(b); 2004-124, s. 31.17(b); 2005-276, s. 29.25(b); 2006-66, s. 22.18(c).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 22.18(c), effective July 1, 2006, added a new subsection (aa).

ARTICLE 6.

Disability Income Plan of North Carolina.

§ 135-100. Short title and purpose.

Editor's Note. —

Session Laws 2006-248, s. 17.1, provides: "There is established a Study Commission on the State Disability Income Plan and Other Related Plans."

Session Laws 2006-248, s. 17.2, provides:

"The Commission shall be comprised of 13 members as follows:

"(1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, one of whom shall be familiar with workers' compensation issues relating to State employees or school employees, and one at-large.

"(2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, one of whom shall be familiar with workers' compensation issues relating to State employees or school employees, and one at-large.

"(3) The State Treasurer or the Treasurer's designee.

"(4) The Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.

"(5) The Chair of the North Carolina Industrial Commission or the Chair's designee.

"(6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.

"(7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

"Any vacancy shall be filled by the officer who made the original appointment. The President Pro Tempore of the Senate and the Speaker of the House shall each appoint a co-chair. The Commission shall meet at the call of the cochairs."

Session Laws 2006-248, s. 17.3, provides: "The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes, the Death Benefit Plan established pursuant to G.S. 135-5(l), and the Separate Insurance Benefits Plan for State and Local Governmental Law Enforcement Officers established pursuant to G.S. 143-166.60 to determine what changes, if any, should be made to those Plans. The Commission shall consider what changes could be made to the Plans that would enhance the efficiency of and reduce the cost of the Plans to the State and its employees."

Session Laws 2006-248, s. 17.4, provides: "The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall designate cochairs of the Commission from among their respective appointees. The Commission shall meet upon the call of the cochairs. Members of the Commission shall receive per diem, subsistence, and travel allowance in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4."

Session Laws 2006-248, s. 17.5, provides: "The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building."

Session Laws 2006-248, s. 17.6, provides: "The Commission shall employ an actuary with expertise in the areas of disability income insurance and group life insurance to assist the Commission in its work pursuant to the procedure set forth in G.S. 120-32.02. This actuary shall not be a State employee or a person currently under contract with the State to provide services. If necessary, the Commission may hire other employees as provided in G.S. 120-32.02."

Session Laws 2006-248, s. 17.7, provides: "The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives."

Session Laws 2006-248, s. 17.8, provides: "The Commission shall submit a report of the results of its study, including any legislative recommendations, to the General Assembly not later than January 1, 2007."

Session Laws 2006-248, s. 17.9, provides: "Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of this Part."

§ 135-101. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Base rate of compensation" shall mean the regular monthly rate of compensation not including pay for shift premiums, overtime, or other

types of extraordinary pay; in all cases of doubt, the Board of Trustees shall determine what is "base rate of compensation".

(2) "Beneficiary" shall mean any person in receipt of a disability allowance or other benefit as provided in this Article.

(3) "Benefits" shall mean the monthly disability income payments made pursuant to the provisions of this Article. In the event of death on or after the first day of a month, or in the event the short-term disability benefit ends on or after the first day of a month where the beneficiary is eligible and applies for an early service or a service retirement allowance the first of the following month, the monthly benefit shall not be prorated and shall equal the benefits paid in the previous month.

(4) "Board of Trustees" shall mean the Board of Trustees of the Teachers' and State Employees' Retirement System as provided in G.S. 135-6.

(5) "Compensation" shall mean any compensation as the term is defined in G.S. 135-1(7a).

(6) "Disability" or "Disabled" shall mean the mental or physical incapacity for the further performance of duty of a participant or beneficiary; provided that such incapacity was not the result of terrorist activity, active participation in a riot, committing or attempting to commit a felony, or intentionally self-inflicted injury.

(7) "Earnings" shall mean all income for personal services rendered or otherwise receivable, including, but not limited to, salaries and wages, fees, commissions, royalties, awards and other similar items and self-employment; in all cases of doubt, the Board of Trustees shall determine what are "earnings".

(8) "Employee" shall mean any employee as the term is defined in G.S. 135-1(10).

(9) "Employer" shall mean any employer as the term is defined in G.S. 135-1(11).

(10) "Medical Board" shall mean the board of physicians as provided in G.S. 135-102(d).

(11) "Member" shall mean any member as the term is defined in G.S. 135-1(13).

(12) "Membership service" shall mean any service as defined in G.S. 135-1(14).

(13) "Participant" shall mean any teacher or employee eligible to participate in the Plan as provided in G.S. 135-103.

(14) "Plan" shall mean the Disability Income Plan of North Carolina as provided in this Article.

(15) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of Article 1 of this Chapter.

(16) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.

(17) "Service" shall mean service as a teacher or employee as defined in G.S. 135-1(10) or G.S. 135-1(25).

(18) "State" shall mean the State of North Carolina.

(19) "Teacher" shall mean any teacher as the term is defined in G.S. 135-1(25).

(20) **(Effective until August 1, 2007)** "Trial Rehabilitation" shall mean a return to service in any capacity, if the return occurs within the waiting period as provided in G.S. 135-104 and shall mean a return to service in the same capacity that existed prior to the disability if the

return occurs within the short-term disability period as provided in G.S. 135-105 or within the long-term disability period as provided in G.S. 135-106.

(20) **(Effective August 1, 2007)** "Trial Rehabilitation" shall mean a return to service in any capacity, if the return occurs within the waiting period as provided in G.S. 135-104; shall mean a return to service in the same capacity that existed prior to the disability if the return occurs within the short-term disability period as provided in G.S. 135-105; and shall mean a return to service in any capacity and in any position provided the salary earned is equal to or greater than the salary upon which the long-term disability benefit is based immediately preceding the return to service, if the return occurs within the long-term disability period as provided in G.S. 135-106.

(21) "Workers' Compensation" shall mean any disability income benefits provided under the North Carolina Workers' Compensation Act, excluding any payments for a permanent partial disability rating. (1987, c. 738, s. 29(q); 1989, c. 717, ss. 7, 8; 1991 (Reg. Sess., 1992), c. 779, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(s); 2003-284, s. 30.20(j); 2004-78, s. 1; 2006-74, ss. 1, 2.)

Subdivision (20) Set Out Twice. — The first version of subdivision (20) set out above is effective until August 1, 2007. The second version of subdivision (20) set out above is effective August 1, 2007.

Effect of Amendments. —

Session Laws 2006-74, s. 1, effective July 1, 2002, substituted "G.S. 135-105 or within the long-term disability period as provided in G.S. 135-106" for "G.S. 135-105" in subdivision (20).

Session Laws 2006-74, s. 2, effective August 1, 2007, in subdivision (20), substituted language beginning "G.S. 135-105; and shall mean . . ." and ending "as provided in G.S. 135-106" for "G.S. 135-105 or within the long term disability period as provided in G.S. 135-106," and made a minor stylistic change.

§ 135-106. Long-term disability benefits.

(a) **(Effective until August 1, 2007)** Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to becoming disabled or upon cessation of continuous salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article.

(a) **(Effective August 1, 2007)** Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is unable to perform any occupation or employment commensurate to the beneficiary's or participant's education, training, or experience, which is available in the same commuting area for State employees or within the same local school administrative unit for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than sixty-five percent (65%) of that beneficiary's or participant's predisability earnings, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the

G.S. 135-106(a) is set out twice. See notes.

Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article.

(b) After the commencement of benefits under this section, the benefits payable under the terms of this section shall be equal to sixty-five percent (65%) of 1⁄12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the short-term disability period as may be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1⁄12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars ($3,900) per month reduced by any primary Social Security disability benefits and by monthly payments for Workers' Compensation to which the participant or beneficiary may be entitled. The monthly benefit shall be further reduced by the amount of any monthly payments from the federal Veterans Administration, any other federal agency or any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, in any event, the benefit payable shall be no less than ten dollars ($10.00) a month. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall not extend the first 36 consecutive calendar months of the long-term disability period. An election to receive any salary continuation for any part of any given day shall be in lieu of any long-term benefit payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term benefit otherwise payable. Notwithstanding the foregoing, upon the completion of four years from the conclusion of the waiting period as provided in G.S. 135-104, the beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security disability benefit to which the beneficiary might be entitled had the beneficiary been awarded Social Security disability benefits. Provided that, in any event, a beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security retirement benefit to which the beneficiary might be entitled.

Notwithstanding the foregoing, the long-term disability benefit is payable so long as the beneficiary is disabled until the earliest date at which the beneficiary is eligible for an unreduced service retirement allowance from the Retirement System, at which time the beneficiary would receive a retirement allowance calculated on the basis of the beneficiary's average final compensation at the time of disability as adjusted to reflect compensation increases subsequent to the time of disability and the creditable service accumulated by the beneficiary, including creditable service while in receipt of benefits under the Plan.

(c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability benefits who has earnings during the long-term disability period shall have his long-term disability benefit reduced when the sum of the net long-term disability benefit and the earnings equals one hundred percent (100%) of monthly compensation adjusted as provided under G.S. 135-108. The net long-term benefit shall mean the long-term benefit amount payable as calculated under (b) above, after the reduction for Social Security benefits to which the beneficiary might be entitled. The net long-term disability benefit shall be reduced dollar-for-dollar for the amount of earnings in excess of the one hundred percent (100%) monthly limit. Any beneficiary exceeding the earnings limitations shall notify the Plan by the fifth of the month succeeding the month in which the earnings were received of the amount of earnings in excess of the limitations herein provided. Failure to report excess earnings may result in a suspension or termination of benefits as determined by the Board of Trustees.

(c1) During the long-term disability period, a beneficiary may return to service for trial rehabilitation for periods of not greater than 36 months of continuous service. Such return will not cause the beneficiary to become a participant and will not require a new waiting period or short-term disability period to commence regardless of whether the beneficiary is unable to continue in service due to the same incapacity or a different incapacity.

A beneficiary who, during a period of trial rehabilitation, is unable to continue in service may be entitled to a restoration of the long-term disability benefit provided that the Medical Board certifies that the beneficiary is disabled in accordance with the laws in effect at the time of the Board's original approval for long-term disability benefits, either due to the same or a different incapacity, notwithstanding the requirement the incapacity has been continuous. In the event that the Medical Board determines that the long-term disability benefit should be restored, the restored benefit should be calculated in accordance with G.S. 135-106(b); should include any post-disability benefit adjustments as provided by G.S. 135-108; and should not be reduced by an amount equal to a primary Social Security disability benefit to which the beneficiary might be entitled had the beneficiary been awarded Social Security benefits until the beneficiary has been eligible to receive long-term disability benefits for 36 months, including any period the beneficiary elected to receive any salary continuation in lieu of the long-term benefit, but not including any period of trial rehabilitation.

A beneficiary who returns to service for a period of trial rehabilitation and who has continued in service for greater than 36 continuous months shall again become a participant, and any subsequent incapacity shall be treated as a new incapacity causing a new waiting period to begin. Such a beneficiary may be entitled to additional long-term disability benefits on account of the new incapacity provided the beneficiary meets all other requirements notwithstanding the requirement of five years of membership service within the 96 calendar months prior to becoming disabled or the cessation of continuous salary continuation payments.

(d) Notwithstanding the foregoing, a participant or beneficiary who has applied for and been approved by the Medical Board for long-term disability benefits may make an irrevocable election, within 90 days from the date of notification of such approval, and prior to receipt of any long-term disability benefit payments, to forfeit all pending and accrued rights to the long-term disability benefit including any ancillary benefits and retire on an early service retirement allowance or receive a return of accumulated contributions from the Retirement System. (1987, c. 738, s. 29(q); 1989, c. 717, s. 11; 1989 (Reg. Sess., 1990), c. 1032, s. 2; 1991 (Reg. Sess., 1992), c. 779, s. 4; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(u); 2003-284, s. 30.20(l); 2004-78, ss. 3, 4; 2005-91, s. 6.1; 2005-276, s. 29.30B(a), (b); 2006-74, ss. 3, 4(a), (b).)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective for persons vested on or before August 1, 2007. The second version of subsection (a) set out above is effective for persons vested after August 1, 2007.

Effect of Amendments. —

Session Laws 2004-78, s. 4, as amended by Session Laws 2005-276, s. 29.30B, and as amended by Session Laws 2006-74, s. 4, effective August 1, 2007, and applicable only to persons not vested in the disability plan in question on that date, substituted "unable to perform any occupation or employment commensurate to the beneficiary's or participant's education, training, or experience, which is available in the same commuting area for State employees or within the same local school administrative unit for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than sixty-five percent (65%) of that beneficiary's or participant's predisability earnings" for "mentally or physically incapacitated for the further performance of duty" in the first paragraph in subsection (a).

Session Laws 2006-74, s. 3, effective July 1, 2002, added subsection (c1).

Chapter 136.

Roads and Highways.

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Sec.
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136-44.5. (Effective July 1, 2007) Secondary roads; mileage study; allocation of funds.

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136-44.50. Transportation corridor official map act.
136-66.8. Agreements with units of local government to expedite projects.

Article 6F.

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136-89.159 through 136-89.170. [Repealed.]

Article 6G.

Private Pilot Toll Project.

136-89.171 through 136-89.179. [Repealed].

Article 6H.

Public Toll Roads and Bridges.

136-89.183. Powers of the Authority.
136-89.187. Conversion of free highways prohibited.
136-89.188. Use of revenues.
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Article 14.

North Carolina Highway Trust Fund.

136-176. (For contingent repeal see editor's note) Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.
136-182. (Effective until July 1, 2007) Supplement for secondary road construction.
136-182. (Effective July 1, 2007) Supplement for secondary road construction.

ARTICLE 1.

Organization of Department of Transportation.

§ 136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.

(a) The Department of Transportation shall, on or before the tenth day after the convening of each regular session of the General Assembly of North Carolina, make a full printed, detailed report to the General Assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the Department of Transportation, and such other data as may be of interest in connection with the work of the Department of Transportation. A full account of each road project shall be kept by and under the direction of the Department of Transportation or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request.

(a1) **(Effective until July 1, 2007)** The Department of Transportation shall report quarterly beginning on October 15, 1996, and then on the fifteenth of the month following the end of the fiscal quarter, to the Joint Legislative Transportation Oversight Committee on all projects to be built with funds obligated using the cash flow provisions of G.S. 143-28.1. The report shall contain a list of the projects and the amount obligated in anticipation of revenues for each year of the project.

(a1) **(Effective July 1, 2007)** The Department of Transportation shall report quarterly beginning on October 15, 1996, and then on the fifteenth of the month following the end of the fiscal quarter, to the Joint Legislative Transportation Oversight Committee on all projects to be built with funds obligated using the cash flow provisions of G.S. 143C-6-11. The report shall contain a list of the projects and the amount obligated in anticipation of revenues for each year of the project.

(b) At least 30 days before it approves a Transportation Improvement Program in accordance with G.S. 143B-350(f)(4) or approves interim changes to a Transportation Improvement Program, the Department shall submit the proposed Transportation Improvement Program or proposed interim changes to a Transportation Improvement Program to the following members and staff of the General Assembly:

(1) The Speaker and the Speaker Pro Tempore of the House of Representatives;
(2) The Lieutenant Governor and the President Pro Tempore of the Senate;
(3) The Chairs of the House and Senate Appropriations Committees;
(4) Each member of the Joint Legislative Transportation Oversight Committee; and
(5) The Fiscal Research Division of the Legislative Services Commission. (1921, c. 2, s. 23; C.S., s. 3846(l); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1989, c. 692, s. 1.3; c. 770, s. 74.16; 1993, c. 321, s. 169.2(d); 1996, 2nd Ex. Sess., c. 18, s. 19.4(c); 2006-203, s. 74.)

Subsection (a1) Set Out Twice. — The first version of subsection (a1) set out above is effective until July 1, 2007. The second version of subsection (a1) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 74, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-6-11" for "G.S. 143-28.1" in subsection (a1).

Article 2.

Powers and Duties of Department and Board of Transportation.

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation is vested with the following powers:

(1) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of materials to be used in the construction of State highways under the authority of this Chapter.

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

(3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by said Department of Transportation, thereafter the Department of Transportation shall have the right to condemn the necessary right-of-way under the provisions of Article 9 of Chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.

(4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.

(5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Department of Transportation shall constitute a Class 1 misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Department of Transportation may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

(6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The Department of Transportation shall have authority to maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.

(8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.

(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except (i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense.

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other

lines, above or below ground, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor.

(11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.

(12) The Department of Transportation shall have such powers as are necessary to comply fully with the provisions of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and programs the Department is authorized to administer. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North

Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000).

(12a) The Department of Transportation shall have such powers as are necessary to establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation is authorized to apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the above federal aid acts. Such loans or other financial assistance shall be subject to repayment and conditioned upon the establishment of such security and the payment of such fees and interest rates as the Department of Transportation may deem necessary. The Department of Transportation is authorized to apply a municipality's share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Transportation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The infrastructure banking program authorized under this subdivision shall not modify the regional distribution formula for the distribution of funds established by G.S. 136-17.2A. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants shall pledge as security for such obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of such governmental units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision shall be outstanding debt for the purpose of Article 10, Chapter 159 of the General Statutes.

(12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other eligible debt-financing instruments to finance federal-aid highway projects using federal funds to pay a portion of principal, interest, and related bond issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National Highway System Designation Act of 1995, Pub. L. 104-59). These bonds shall be issued by the State Treasurer on behalf of the Department and shall be issued pursuant to an order adopted by the Council of State under G.S. 159-88. The State Treasurer shall develop and adopt appropriate debt instruments, consistent with the terms of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use under this subdivision. Prior to issuance of any "GARVEE" or other eligible debt instrument using federal funds to pay a portion of principal, interest, and related bond issuance costs, the State Treasurer shall determine (i) that the total outstanding principal of such debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year; or (ii) that the maximum annual principal and interest of such debt does not exceed fifteen percent (15%) of the expected average annual federal revenue shown for the seven-year period in the most recently adopted Transportation Improvement Program. Notes issued under the provisions of this subdivision may not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit of the State or of any political subdivision thereof, but shall be payable solely from the funds and revenues pledged therefor. All the notes shall contain on their face a statement to the effect that the State of North Carolina shall not be obligated to pay the principal or the interest on the notes, except from the federal transportation fund revenues as shall be provided by the documents governing the revenue note issuance, and that neither the faith and credit nor the taxing power of the State of North Carolina or of any of its political subdivisions is pledged to the payment of the principal or interest on the notes. The issuance of notes under this Part shall not directly or indirectly or contingently obligate the State or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.

(13) The Department of Transportation may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(14) The Department of Transportation shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(15) The Department of Transportation shall have authority to provide facilities for the use of waterborne traffic and recreational uses by establishing connections between the highway system and the navigable and nonnavigable waters of the State by means of connecting roads and piers. Such facilities for recreational purposes shall be funded from funds available for safety or enhancement purposes.

(16) The Department of Transportation, pursuant to a resolution of the Board of Transportation, shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the Department of Transportation, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

(18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless such signs have first been approved by the Department of Transportation.

(20) The Department of Transportation is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the state-maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.

(21) The Department of Transportation is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.

(22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed

may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation is authorized and empowered to regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between highways and airways and the Department of Transportation is authorized and empowered to make rules, regulations, and ordinances for the preservation of safe clearances between highways and airways. The Department of Transportation shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a Class 1 misdemeanor; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

(23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be effected thereby, the Department of Transportation shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.

(24) The Department of Transportation is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The Department of Transportation is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or main-

tenance of a paved road or drive upon any of the above-mentioned institutions, the Department of Transportation shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly.

(26) The Department of Transportation, at the request of a representative from a board of county commissioners, is hereby authorized to acquire by condemnation new or additional right-of-way to construct, pave or otherwise improve a designated State-maintained secondary road upon presentation by said board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of such request by a majority of its members and by the further presentation of a petition requesting such improvement executed by the abutting owners whose frontage on said secondary road shall equal or exceed seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain.

(27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.

(28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

(29a) To coordinate with all public and private entities planning schools to provide written recommendations and evaluations of driveway access and traffic operational and safety impacts on the State highway system resulting from the development of the proposed sites. All public and private entities shall, upon acquiring land for a new school or prior to beginning construction of a new school, relocating a school, or expanding an existing school, request from the Department a written evaluation and written recommendations to ensure that all proposed access points comply with the criteria in the current North

Carolina Department of Transportation "Policy on Street and Driveway Access". The Department shall provide the written evaluation and recommendations within a reasonable time, which shall not exceed 60 days. This subdivision shall not be construed to require the public or private entities planning schools to meet the recommendations made by the Department.

(30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set forth in Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).

(31) The Department of Transportation is authorized to designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that:

a. Have no scenic value,
b. Have been designated or would be so designated solely to preserve system continuity, and
c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subsection.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subsection but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subsection, if requested.

(32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable.

(33) The Department of Transportation is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once

notify the railroad company and require the company to repair the equipment or facilities.

(34) The Department of Transportation may conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all railroads and may investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident.

(35) To establish rural planning organizations, as provided in Article 17 of this Chapter.

(36) To oversee the safety of fixed guideway transit systems in the State not regulated by the Federal Railroad Administration, pursuant to the Intermodal Surface Transportation Efficiency Act of 1991 (49 U.S.C. § 5330). The Department shall adopt rules in conformance with 49 U.S.C. § 5330 concerning its oversight of the safety of fixed guideway transit systems.

(37) To permit private use of and encroachment upon the right-of-way of a State highway or road for the purpose of construction and maintenance of a privately owned bridge for pedestrians or motor vehicles, if the bridge shall not unreasonably interfere with or obstruct the public use of the right-of-way. Any agreement for an encroachment authorized by this subdivision shall be approved by the Board of Transportation, upon a finding that the encroachment is necessary and appropriate, in the sole discretion of the Board. Locations, plans, and specifications for any pedestrian or vehicular bridge authorized by the Board for construction pursuant to this subdivision shall be approved by the Department of Transportation. For any bridge subject to this subdivision, the Department shall retain the right to reject any plans, specifications, or materials used or proposed to be used, inspect and approve all materials to be used, inspect the construction, maintenance, or repair, and require the replacement, reconstruction, repair, or demolition of any partially or wholly completed bridge that, in the sole discretion of the Department, is unsafe or substandard in design or construction. An encroachment agreement authorized by this subdivision may include a requirement to purchase and maintain liability insurance in an amount determined by the Department of Transportation. The Department shall ensure that any bridge constructed pursuant to this subdivision is regularly inspected for safety. The owner shall have the bridge inspected every two years by a qualified private engineering firm based on National Bridge Inspection Standards and shall provide the Department copies of the Bridge Inspection Reports where they shall be kept on file. Any bridge authorized and constructed pursuant to this subdivision shall be subject to all other rules and conditions of the Department of Transportation for encroachments.

(38) To enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for the purpose of advancing the construction schedule of a project identified in the Transportation Improvement Program. If these funds are subject to repayment by the Department, prior to receipt of funds, reimbursement of all funds received by the Department shall be shown in the existing Transportation Improvement Program and shall be reimbursed within seven years of receipt.

(39) To enter into partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdi-

visions to finance, by tolls and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2; 1995 (Reg. Sess., 1996), c. 673, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 19.10(a); 1997-428, s. 1; 1997-443, s. 11A.118(a); 2000-123, s. 1; 2000-140, s. 102; 2001-424, s. 27.27; 2003-184, s. 1; 2003-267, s. 1; 2004-168, s. 1; 2005-403, s. 2; 2006-230, s. 1(a).)

Effect of Amendments. —

Session Laws 2006-230, s. 1(a), effective August 1, 2006, substituted "is" for "shall be" in the middle of the introductory paragraph and added paragraph (39).

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Applied in Welch Contr., Inc. v. N.C. DOT, — N.C. App. —, 622 S.E.2d 691, 2005 N.C. App. LEXIS 2725 (2005).

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over one million two hundred thousand dollars ($1,200,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation and approved by the Board of Transportation.

(b) In those cases in which the amount of work to be let to contract for highway construction, maintenance, or repair is one million two hundred thousand dollars ($1,200,000) or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) **(Effective until July 1, 2007)** The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143, "The Executive Budget Act." In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(c) **(Effective July 1, 2007)** The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Chapter 143C of the General Statutes, the State Budget Act. In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) **(Effective until July 1, 2007)** The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Article 1 of Chapter 143 of the General Statutes, "The Executive Budget Act."

(d) **(Effective July 1, 2007)** The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Chapter 143C of the General Statutes, the State Budget Act.

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the State Highway Administrator that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) Notwithstanding any other provision of law, the Department of Transportation may solicit proposals under rules and regulations adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction, maintenance, or repair. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of Transportation.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities.

(j) Repealed by Session Laws 2002-151, s. 1, effective October 9, 2002.

(k) The Department of Transportation may accept bids under this section by electronic means and may issue rules governing the acceptance of these bids. For purposes of this subsection "electronic means" is defined as means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400; 1989, c. 78; c. 749, ss. 2, 3; 1995, c. 167, s. 1; 1997-196, s. 1; 1999-25, ss. 2, 3; 2001-424, ss. 27.9(a), 27.9(b); 2002-151, s. 1; 2006-68, s. 1; 2006-203, s. 75.)

Subsections (c) and (d) Set Out Twice. — The first versions of subsections (c) and (d) set out above are effective until July 1, 2007. The second versions of subsections (c) and (d) set out above are effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-68, s. 1, effective July 1, 2006, in subsection (a), substituted "23 C.F.R. § 635.109" for "23 C.F.R. § 635.131(a)" in the next-to-last sentence; and rewrote the last sentence.

Session Laws 2006-203, s. 75, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "Chapter 143C of the General Statutes, the State Budget Act" for "Article 1 of Chapter 143, 'The Executive Budget Act'" in subsections (c) and (d).

CASE NOTES

Cited in Welch Contr., Inc. v. N.C. DOT, — N.C. App. —, 622 S.E.2d 691, 2005 N.C. App. LEXIS 2725 (2005).

§ 136-28.4. State policy concerning participation by disadvantaged minority-owned and women-owned businesses in highway contracts.

(a) It is the policy of this State, based on a compelling governmental interest, to encourage and promote participation by disadvantaged minority-owned and women-owned businesses in contracts let by the Department pursuant to this Chapter for the planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for these projects. All State agencies, institutions, and political subdivisions shall cooperate with the Department of Transportation and among themselves in all efforts to conduct outreach and to encourage and promote the use of disadvantaged minority-owned and women-owned businesses in these contracts.

(b) At least every five years, the Department shall conduct a study on the availability and utilization of disadvantaged minority-owned and women-owned business enterprises and examine relevant evidence of the effects of race-based or gender-based discrimination upon the utilization of such business enterprises in contracts for planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for these projects. Should the study show a strong basis in evidence of ongoing effects of past or present discrimination that prevents or limits disadvantaged minority-owned and women-owned businesses from participating in the above contracts at a level which would have existed absent such discrimination, such evidence shall constitute a basis for the State's continued compelling governmental interest in remedying such race and gender discrimination in highway contracting. Under such circumstances, the Department shall, in conformity with State and federal law, adopt by rule and contract provisions a specific program to remedy such discrimination. This specific program shall, to the extent reasonably practicable, address each barrier identified in such study that adversely affects contract participation by disadvantaged minority-owned and women-owned businesses.

(b1) Based upon the findings of the Department's Second Generation Disparity Study completed in 2004, hereinafter referred to as 'Study", the program design shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the Department shall implement a comprehensive antidiscrimination enforcement policy. As appropriate, the program design shall be modified by rules adopted by the Department that are consistent with findings made in the Study and in subsequent studies conducted in accordance with subsection (b) of this section. As part of this program, the Department shall review its budget and establish annual aspirational goals, not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses. These annual aspirational goals for disadvantaged minority-owned and women-owned businesses shall be established consistent with methodology specified in the Study, and they shall not be applied rigidly on specific contracts or projects. Instead, the Department shall establish contract-specific goals or project-specific goals for the participation of such firms in a manner consistent with availability of disadvantaged minority-owned and women-owned businesses, as appropriately defined by its most recent Study, for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization. Nothing in this section shall authorize the use of quotas. Any program implemented as a result of the Study conducted in accordance with this section shall be narrowly tailored to eliminate the effects of historical and continuing discrimination and its impacts on such disadvantaged minority-owned and women-owned businesses without any undue burden on other contractors. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(c) The following definitions apply in this section:

(1) "Disadvantaged business" has the same meaning as "disadvantaged business enterprise" in 49 C.F.R. § 26.5 or any subsequently promulgated replacement regulation.

(2) "Minority" includes only those racial or ethnicity classifications identified by a study conducted in accordance with this section that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.

(d) The Department shall report semiannually to the Joint Legislative Transportation Oversight Committee on the utilization of disadvantaged minority-owned businesses and women-owned businesses and any program adopted to promote contracting opportunities for those businesses. Following each study of availability and utilization, the Department shall report to the Joint Legislative Transportation Oversight Committee on the results of the study for the purpose of determining whether the provisions of this section should continue in force and effect.

(e) This section expires August 31, 2009. (1983, c. 692, s. 3; 1989, c. 692, s. 1.5; 1989 (Reg. Sess., 1990), c. 1066, s. 143(a); 2006-261, s. 4.)

Editor's Note. —

Session Laws 2006-261, s. 6, is a severability clause.

Effect of Amendments. — Session Laws 2006-261, s. 4, effective August 27, 2006, inserted "minority-owned and women-owned" in the middle of the section catchline; in subsection (a), in the first sentence, inserted "based on a compelling governmental interest" near the beginning, inserted "minority-owned and women-owned" near the middle, inserted "planning" near the middle, and inserted "preconstruction" near the middle, and, in the second sentence, substituted "among themselves in all efforts to conduct outreach and to" for "all other State agencies, institutions, and political subdivisions in efforts to" and inserted "minority-owned and women-owned" near the end; rewrote subsection (b); added subsection (b1); rewrote subsection (c); and added subsections (d) and (e).

§ 136-28.14. Project contractor licensing requirements.

The letting of contracts under this Chapter for the following types of projects shall not be subject to the licensing requirements of Article 1 of Chapter 87 of the General Statutes:

(1) Routine maintenance and minor repair of pavements, bridges, roadside vegetation and plantings, drainage systems, concrete sidewalks, curbs, gutters, and rest areas.

(2) Installation and maintenance of pavement markings and markers, ground mounted signs, guardrail, fencing, and roadside vegetation and plantings. (2006-261, s. 1.)

Editor's Note. — Session Laws 2006-261, s. 7, made this section effective August 27, 2006.

Session Laws 2006-261, s. 6, is a severability clause.

§ 136-29. Adjustment and resolution of highway construction contract claim.

CASE NOTES

Cited in Welch Contr., Inc. v. N.C. DOT, — N.C. App. —, 622 S.E.2d 691, 2005 N.C. App. LEXIS 2725 (2005).

ARTICLE 2A.

State Roads Generally.

§ 136-44.2A. (Effective until July 1, 2007) Secondary road construction.

There shall be annually allocated out of the State Highway Fund to the Department of Transportation for secondary road construction programs developed pursuant to G.S. 136-44.7 and 136-44.8, a sum equal to that allocation made from the Highway Fund under G.S. 136-41.1(a). In addition, as provided in G.S. 136-176(b)(4) and G.S. 20-85(b), revenue is annually allocated from the Highway Trust Fund for secondary road construction. Of the funds allocated from the Highway Fund and the Highway Trust Fund, the sum of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated among the counties in accordance with G.S. 136-44.5(b). All funds for secondary road construction in excess of that amount shall be allocated among the counties in accordance with G.S. 136-44.5(c). (1981, c. 690, s. 6; 1989, c. 692, s. 1.7.)

G.S. 136-44.2A is set out twice. See notes.

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 136-44.2A.

§ 136-44.2A. (Effective July 1, 2007) Secondary road improvement program.

There shall be annually allocated from the Highway Fund to the Department of Transportation for secondary road improvement programs developed pursuant to G.S. 136-44.7 and 136-44.8, a sum equal to that allocation made from the Highway Fund under G.S. 136-41.1(a). In addition, as provided in G.S. 136-176(b)(4) and G.S. 20-85(b), revenue is annually allocated from the Highway Trust Fund for secondary road construction. Of the funds allocated from the Highway Fund, the sum of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated among the counties in accordance with G.S. 136-44.5(b). All funds allocated from the Highway Fund for secondary road improvements in excess of that amount shall be allocated among the counties in accordance with G.S. 136-44.5(c). All funds allocated from the Highway Trust Fund for secondary road improvement programs shall be allocated in accordance with G.S. 136-182. (1981, c. 690, s. 6; 1989, c. 692, s. 1.7; 2005-404, s. 1; 2006-258, s. 1.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 136-44.2A.

Editor's Note. — Session Laws 2005-404, s. 4, as amended by Session Laws 2006-258, s. 1, provides: "This act becomes effective July 1, 2007."

Session Laws 2006-258, s. 5, provides: "The Joint Legislative Transportation Oversight Committee shall conduct a study of the cost of paving and maintenance of both paved and unpaved secondary roads in different geographic areas of the State. The Committee shall complete its report by March 1, 2007."

Effect of Amendments. — Session Laws 2005-404, s. 1, as amended by Session Laws 2006-258, s. 1, effective July 1, 2007, substituted "improvement program" for "construction" in the section heading; substituted "from the Highway Fund to the Department of Transportation for secondary road improvement" for "out of the State Highway Fund to the Department of Transportation for secondary road construction" in the first sentence; deleted "Fund and the Highway Trust" preceding "Fund, the sum" in the third sentence; substituted "allocated from the Highway Fund for secondary road improvements" for "for secondary road construction" in the fourth sentence; and added the last sentence.

§ 136-44.5. (Effective until July 1, 2007) Secondary roads; mileage study; allocation of funds.

(a) Before July 1, in each calendar year, the Department of Transportation shall make a study of all state-maintained unpaved roads in the State. The study shall determine the number of miles of unpaved state-maintained roads in each county, the total number of miles of unpaved state-maintained roads in the State, the number of miles of unpaved state-maintained roads in each county that have a traffic vehicular equivalent of at least 50 vehicles a day, and the total number of miles of unpaved state-maintained roads in the State that have a traffic vehicular equivalent of at least 50 vehicles a day. Except for federal-aid programs, the Department shall allocate all secondary road construction funds on the basis of a formula using the study figures.

(b) The first sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated as follows: Each county shall receive a percentage of these funds, the percentage to be determined as a factor of the number of miles of unpaved State-maintained secondary roads in the county divided by the total number of miles of paved and unpaved State-maintained secondary roads in the State, excluding those unpaved secondary roads that have been determined to be eligible for paving as defined in subsection (a) of this section. Beginning in fiscal year 2010-2011, allocations pursuant to this subsection shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage.

(c) Funds allocated for secondary road construction in excess of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated to each county based on the percentage proportion that the number of miles in the county of state-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day bears to the total number of miles in the State of state-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day.

(d) Copies of the Department study of unpaved state-maintained secondary roads and copies of the individual county allocations shall be made available to newspapers having general circulation in each county. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1989, c. 692, s. 1.8.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 136-44.5.

§ 136-44.5. (Effective July 1, 2007) Secondary roads; mileage study; allocation of funds.

(a) Before July 1, in each calendar year, the Department of Transportation shall make a study of all State-maintained unpaved and paved secondary roads in the State. The study shall determine:

(1) The number of miles of unpaved State-maintained roads in each county eligible for paving and the total number of miles that are ineligible;

(2) The total number of miles of unpaved State-maintained roads in the State eligible for paving and the total number of miles that are ineligible; and

(3) The total number of paved State-maintained roads in each county, and the total number of miles of paved State-maintained roads in the State.

In this subsection, (i) ineligible unpaved mileage is defined as the number of miles of unpaved roads that have unavailable rights-of-way or for which environmental permits cannot be approved to allow for paving, and (ii) eligible unpaved mileage is defined as the number of miles of unpaved roads that have not been previously approved for paving by any funding source or has the potential to be programmed for paving when rights-of-way or environmental permits are secured. Except for federal-aid programs, the Department shall allocate all secondary road improvement funds on the basis of a formula using the study figures.

(b) The first sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated as follows: Each county shall receive a percentage of these funds, the percentage to be determined as a factor of the number of miles of paved and unpaved State-maintained secondary roads in the county divided by the total number of miles of paved and unpaved State-maintained secondary roads in the State, excluding those unpaved secondary roads that have been determined to be eligible for paving as defined in subsection (a) of this section. Beginning in fiscal year 2010-2011, allocations pursuant to this subsection shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage.

(c) Funds allocated for secondary road construction in excess of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated

G.S. 136-44.5 is set out twice. See notes.

to each county based on the percentage proportion that the number of miles in the county of State-maintained unpaved secondary roads bears to the total number of miles in the State of State-maintained unpaved secondary roads. In a county that has roads with eligible miles, these funds shall only be used for paving unpaved secondary road miles in that county. In a county where there are no roads eligible to be paved as defined in subsection (a) of this section, the funds may be used for improvements on the paved and unpaved secondary roads in that county. Beginning in fiscal year 2010-2011, allocations pursuant to this subsection shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage.

(d) Copies of the Department study of unpaved and paved State-maintained secondary roads and copies of the individual county allocations shall be made available to newspapers having general circulation in each county. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1989, c. 692, s. 1.8; 2005-404, s. 2; 2006-258, ss. 1, 2.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 136-44.5.

Editor's Note. — Session Laws 2006-258, s. 5, provides: "The Joint Legislative Transportation Oversight Committee shall conduct a study of the cost of paving and maintenance of both paved and unpaved secondary roads in different geographic areas of the State. The Committee shall complete its report by March 1, 2007."

Effect of Amendments. — Session Laws 2005-404, s. 2, as amended by Session Laws 2006-258, s. 1, effective July 1, 2007, rewrote the section.

Session Laws 2006-258, s. 2, effective July 1, 2007, inserted "paved and" near the middle of the first sentence of subsection (b).

ARTICLE 2D.

Railroad Revitalization.

§ 136-44.37. (Effective July 1, 2007) Department to provide nonfederal matching share.

The Department of Transportation upon approval by the Board of Transportation and the Director of the Budget may provide for the matching share of federal rail revitalization assistance programs through private resources, county funds or State appropriations as may be provided by the General Assembly. (1979, c. 658, s. 3; 1983, c. 717, s. 48; 1985 (Reg. Sess., 1986), c. 955, ss. 47, 48; 2006-203, s. 76.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 76, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last sentence which read: "Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission."

§ 136-44.38. (Effective July 1, 2007) Department to provide State and federal financial assistance to cities and counties for rail revitalization.

(a) The Department of Transportation is authorized to distribute to cities and counties State financial assistance for local rail revitalization programs provided that every rail revitalization project for which State financial assistance would be utilized must be approved by the Board of Transportation and by the Director of the Budget.

(b) Repealed by Session Laws 1989, c. 600, s. 4. (1979, c. 658, s. 3; 1983, c. 717, s. 48; 1985 (Reg. Sess., 1986), c. 955, ss. 49, 50; 1989, c. 600, s. 4; 2006-203, s. 77.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — This section is set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 77, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last sentence in subsection (a), which read: "Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission."

Article 2E.

Transportation Corridor Official Map Act.

§ 136-44.50. Transportation corridor official map act.

(a) A transportation corridor official map may be adopted or amended by any of the following:

(1) The governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.

(2) The Board of Transportation for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.

(3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.

(4) The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.

(5) The Wilmington Urban Area Metropolitan Planning Organization for any project that is within its urbanized boundary and identified in G.S. 136-179.

Before a city adopts a transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city shall obtain approval from the Board of County Commissioners.

(a1) No transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the city, the regional transportation authority, the North Carolina Turnpike Authority, or the Department of Transportation has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the transportation corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the transportation corridor passes.

c. By posting copies of the proposed transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

d. By first-class mail sent to each property owner affected by the corridor. The notice shall be sent to the address listed for the owner in the county tax records.

(2) A permanent certified copy of the transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.

(b) Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars ($5.00) for each map sheet or page recorded.

(4) The names submitted as required under subdivision (a)(3) of this section shall be indexed in the "grantor" index by the Register of Deeds.

(c) Repealed by Session Laws 1989, c. 595, s. 1.

(d) Within one year following the establishment of a transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the transportation corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a transportation corridor official map or amendments to a transportation corridor official map. When a city prepares a transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the one-year period provided by this section unless it establishes a substantially different corridor in a primarily new location.

(e) The term "amendment" for purposes of this section includes any change to a transportation corridor official map, including:

(1) Failure of the Department of Transportation, the North Carolina Turnpike Authority, a city, or a regional transportation authority to begin work on an environmental impact statement or preliminary engineering as required by this section; or

(2) Deletion of the corridor from the transportation corridor official map by action of the Board of Transportation, the North Carolina Turnpike Authority, or deletion of the corridor from the long-range transportation plan of a city or regional transportation authority by action of the city or regional transportation authority governing Board.

(f) The term "transportation corridor" as used in this Article does not include bikeways or greenways. (1987, c. 747, s. 19; 1989, c. 595, s. 1; 1998-184, s. 1; 2005-275, s. 1; 2005-418, s. 9; 2006-237, s. 1.)

Effect of Amendments. — Session Laws 2006-237, s. 1, effective August 13, 2006, added paragraph (a)(5); and added the subsection (a1) designation.

§ 136-66.8. Agreements with units of local government to expedite projects.

(a) Agreements Authorized. — The Department of Transportation may enter into agreements with units of local government for the purpose of expediting transportation projects currently programmed in the Transportation Improvement Plan.

(b) Form of Agreements. — The agreements affected by this section shall be between the Department of Transportation and units of local government. The agreements may authorize units of local government to construct projects scheduled in the Transportation Improvement Plan more than two years from the date of the agreement. The units of local government shall fund one hundred percent (100%) of the project at current prices. In a future year, when the project is funded from State and federal sources, the units of local government shall be reimbursed an appropriate share of the funds, at the future programmed project funding amount, as identified and scheduled in the Transportation Improvement Plan.

(c) Report. — The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee by December 1, 2006, on any agreements executed with units of local government pursuant to this section. (2006-135, s. 3.)

Editor's Note. — Session Laws 2006-135, s. 4, made this section effective July 19, 2006.

ARTICLE 3B.

Dedication of Right-of-Way with Density or Development Rights Transfer.

§ 136-66.10. Dedication of right-of-way under local ordinances.

CASE NOTES

Cited in Wright v. Town of Matthews, — N.C. App. —, 627 S.E.2d 650, 2006 N.C. App. LEXIS 702 (2006).

ARTICLE 6F.

North Carolina Bridge Authority.

§§ 136-89.159 through 136-89.170: Repealed by Session Laws 2006-228, s. 1, effective August 10, 2006.

Editor's Note. — G.S. 136-89.168 through 136-89.170 were reserved sections.

ARTICLE 6G.

Private Pilot Toll Project.

§§ 136-89.171 through 136-89.179: Repealed by Session Laws 2006-228, s. 2, effective August 10, 2006.

Editor's Note. — Repealed G.S. 136-89.173 through 136-89.179 were reserved sections.

ARTICLE 6H.

Public Toll Roads and Bridges.

§ 136-89.183. Powers of the Authority.

(a) The Authority shall have all of the powers necessary to execute the provisions of this Article, including the following:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To study, plan, develop, and undertake preliminary design work on up to nine Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain the following projects:
  a. Triangle Parkway.
  b. Gaston East-West Connector.
  c. Monroe Connector.

d. Cape Fear Skyway.
e. A bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia.
f. I-540 in Wake and Durham Counties.

Any other project proposed by the Authority in addition to the projects listed in this subdivision must be approved by the General Assembly prior to construction.

A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project.

(3) Repealed by Session Laws 2005-275, s. 2, effective August 12, 2005.
(4) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage real or personal property, including the power to acquire property by eminent domain pursuant to G.S. 136-89.184.
(5) To fix, revise, charge, and collect tolls and fees for the use of the Turnpike Projects. Prior to the effective date of any toll or fee for use of a Turnpike Facility, the Authority shall submit a description of the proposed toll or fee to the Board of Transportation, the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations for review.
(6) To issue bonds or notes of the Authority as provided in this Article.
(7) To establish, construct, purchase, maintain, equip, and operate any structure or facilities associated with the Turnpike System.
(8) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.
(9) To apply for, accept, and administer loans and grants of money or real or personal property from any federal agency, the State or its political subdivisions, local governments, or any other public or private sources available.
(10) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article, in accordance with the review and comment requirements of G.S. 136-89.182(j).
(11) To utilize employees of the Department; to contract for the services of consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants; to employ administrative staff as may be required in the judgment of the Authority; and to fix and pay fees or compensation to the Department, contractors, and administrative employees from funds available to the Authority.
(12) To receive and use appropriations from the State and federal government.
(13) To adopt procedures to govern its procurement of services and delivery of Turnpike Projects.
(14) To perform or procure any portion of services required by the Authority.
(15) To use officers, employees, agents, and facilities of the Department for the purposes and upon the terms as may be mutually agreeable.
(16) To contract for the construction, maintenance, and operation of a Turnpike Project.
(17) To enter into partnership agreements with the Department of Transportation, agreements with political subdivisions of the State, and agreements with private entities, and to expend such funds as it deems necessary, pursuant to such agreements, for the purpose of financing the cost of acquiring, constructing, equipping, operating, or maintaining any Turnpike Project. An agreement entered under this

subdivision requires the concurrence of the Board of Transportation if the Department of Transportation is a party to the agreement.

(18) To utilize incentives in any contract for development or construction of a Turnpike Project, in order to promote expedited delivery of the project.

(b) To execute the powers provided in subsection (a) of this section, the Authority shall determine its policies by majority vote of the members of the Authority Board present and voting, a quorum having been established. Once a policy is established, the Authority Board shall communicate it to the Executive Director or the Executive Director's designee, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Authority Board shall have the responsibility or authority to give operational directives to any employee of the Authority other than the Executive Director or the Director's designee. (2002-133, s. 1; 2005-275, s. 2; 2006-228, s. 5; 2006-230, s. 1(b).)

Effect of Amendments. —

Session Laws 2006-228, s. 5, effective August 10, 2006, rewrote subdivision (a)(2).

Session Laws 2006-230, s. 1(b), effective August 1, 2006, in paragraph (a)(17), inserted "with the Department of Transportation" near the beginning of the first sentence; and added the second sentence.

§ 136-89.187. Conversion of free highways prohibited.

The Authority Board is prohibited from converting any segment of the nontolled State Highway System to a toll facility, except for a segment of Interstate 540 under construction as of July 1, 2006, located in Wake and Durham Counties, and extending from I-40 southwest to N.C. 55. No segment may be converted to a toll route pursuant to this section unless first approved by the Metropolitan Planning Organization (MPO) or Rural Planning Organization (RPO) of the area in which that segment is located. (2002-133, s. 1; 2006-228, s. 3.)

Effect of Amendments. — Session Laws 2006-228, s. 3, effective August 10, 2006, added "except for a segment of Interstate 540 under construction as of July 1, 2006, located in Wake and Durham Counties, and extending from I-40 southwest to N.C. 55" at the end of the first sentence; and added the second sentence.

§ 136-89.188. Use of revenues.

(a) Revenues derived from Turnpike Projects authorized under this Article shall be used only for Authority administration costs; Turnpike Project development, right-of-way acquisition, construction, operation, and maintenance; and debt service on the Authority's revenue bonds or related purposes such as the establishment of debt service reserve funds.

(b) The Authority may use up to one hundred percent (100%) of the revenue derived from a Turnpike Project for debt service on the Authority's revenue bonds or for a combination of debt service and operation and maintenance expenses of the Turnpike Projects.

(c) The Authority shall use not more than five percent (5%) of total revenue derived from all Turnpike Projects for Authority administration costs.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, toll revenues generated from a converted segment of the State highway system previously planned for operation as a nontoll facility shall only be used for the funding or financing of the right-of-way acquisition, construction, expansion, operations, maintenance, and Authority administration costs associated with the converted segment or a contiguous toll facility. (2002-133, s. 1; 2006-228, s. 4.)

Effect of Amendments. — Session Laws 2006-228, s. 4, effective August 10, 2006, added subsection (d).

§ 136-89.194. Laws applicable to the Authority; exceptions.

(a) Motor Vehicle Laws. — The Turnpike System shall be considered a "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State Highway Patrol and the Division of Motor Vehicles, shall have the same powers and duties on the Turnpike System as on any other highway or public vehicular area.

(b) Contracting. — For the purposes of implementing this Article, the Authority shall solicit competitive proposals for the construction of Turnpike Projects in accordance with the provisions of Article 2 of this Chapter. Contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with construction of Turnpike Projects shall be solicited in accordance with procedures utilized by the Department of Transportation.

(c) Alternative Contracting Methods. — Notwithstanding the provisions of subsection (b) of this section, the Authority may authorize the use of alternative contracting methods if:

(1) The authorization applies to an individual project;

(2) The Authority has concluded, and documented in writing, that the alternative contracting method is necessary because the project cannot be completed utilizing the procedures of Article 2 of this Chapter within the necessary time frame or available funding or for other reasons the Authority deems in the public interest;

(3) The Authority has provided, to the extent possible, for the solicitation of competitive proposals prior to awarding a contract; and

(4) The approved alternative contracting method provides for reasonable compliance with the disadvantaged business participation goals of G.S. 136-28.4.

(d) Entry for Surveys. — The Turnpike Authority and its employees and contractors shall have the same right of entry for surveys, borings, soundings, or examinations as granted the Department of Transportation in G.S. 136-120. (2002-133, s. 1; 2006-228, s. 6.)

Effect of Amendments. — Session Laws 2006-228, s. 6, effective August 10, 2006, added subsection (d).

Article 7.

Miscellaneous Provisions.

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

CASE NOTES

Effect of Withdrawal. —

Where the owners asserted that the street was not part of a dedication of a public road into which the street branched, the appellate court agreed; to the extent any document may have constituted an offer or proposal for dedication of the street as part of the public road, that offer or proposal was withdrawn under G.S. 136-96, as the withdrawal of street dedication submitted by the family members of those who dedicated the public road and who previously owned the owners' property stated that the street was a 60-foot private right-of-way. Wright v. Town of Matthews, — N.C. App. —, 627 S.E.2d 650, 2006 N.C. App. LEXIS 702 (2006).

Cited in Nelms v. Davis, — N.C. App. —, 632 S.E.2d 823, 2006 N.C. App. LEXIS 1826 (2006).

ARTICLE 9.

Condemnation.

§ 136-103. Institution of action and deposit.

CASE NOTES

Cited in DOT v. M.M. Fowler, Inc., 170 N.C. App. 162, 611 S.E.2d 448, 2005 N.C. App. LEXIS 905 (2005); Wright v. Town of Matthews, — N.C. App. —, 627 S.E.2d 650, 2006 N.C. App. LEXIS 702 (2006); City of Charlotte v. Hurlahe, — N.C. App. —, 631 S.E.2d 28, 2006 N.C. App. LEXIS 1296 (2006).

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.

CASE NOTES

Construction With Other Statutes. — Decision and order of the North Carolina Industrial Commission was affirmed because the North Carolina Tort Claims Act, G.S. 143-291 et seq., governed the property owners' negligence claim against a state agency, rather than G.S. 136-111. The statute addressed actions seeking damages for condemnation, while the North Carolina Tort Claims Act governed negligence claims. Pate v. N.C. DOT, — N.C. App. —, 626 S.E.2d 661, 2006 N.C. App. LEXIS 528 (2006).

§ 136-112. Measure of damages.

CASE NOTES

II. Damages Where Part of Tract Is Taken.
III. Pleading and Practice.

II. DAMAGES WHERE PART OF TRACT IS TAKEN.

Evidence of Lost Profits Properly Admitted. — Where the North Carolina Department of Transportation took a portion of defendant's property to widen a highway, thereby restricting customer's access to defendant's service station, the trial court did not err in permitting the owner's president to testify as to loss of profits and in allowing its expert to use those lost profits in calculating the fair market value of the property after the taking. DOT v. M.M. Fowler, Inc., 170 N.C. App. 162, 611 S.E.2d 448, 2005 N.C. App. LEXIS 905 (2005).

III. PLEADING AND PRACTICE.

Admissibility of Evidence Generally. — Trial court did not err in admitting evidence of the net income of a hypothetical valet parking business on a condemned property as, inter alia, the owners' experts testified as to the reasons that the net income approach was used and the process by which they derived the necessary numerical values, and the evidence of the net income from operation of a parking lot on the property was not inadmissible evidence of "lost profits" as the owners' experts performed the calculations necessary to convert rental income to fair market value. City of Charlotte v. Hurlahe, — N.C. App. —, 631 S.E.2d 28, 2006 N.C. App. LEXIS 1296 (2006).

Owner's Testimony as to Intended Use Not Prejudicial. — Owner's testimony of his intended use for a condemned property did not prejudice a city as the parties agreed that the highest and best use for the property was as an airport parking lot and the city used the property as an airport parking lot after it was condemned. City of Charlotte v. Hurlahe, — N.C. App. —, 631 S.E.2d 28, 2006 N.C. App. LEXIS 1296 (2006).

ARTICLE 14.

North Carolina Highway Trust Fund.

§ 136-176. (For contingent repeal see editor's note) Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.

(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, alternative fuel, and road tax revenue deposited in the Fund under G.S. 105-449.125, 105-449.134, and 105-449.43, respectively.

(2) Motor vehicle use tax deposited in the Fund under G.S. 105-187.9.

(3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.

(4) Repealed by Session Laws 2001-424, s. 27.1.

(5) Interest and income earned by the Fund.

(a1) The Department shall use two hundred twenty million dollars ($220,000,000) in fiscal year 2001-2002, two hundred twelve million dollars ($212,000,000) in fiscal year 2002-2003, and two hundred fifty-five million dollars ($255,000,000) in fiscal year 2003-2004 of the cash balance of the Highway Trust Fund for the following purposes:

(1) For primary route pavement preservation. — One hundred seventy million dollars ($170,000,000) in fiscal year 2001-2002, and one hundred fifty million dollars ($150,000,000) in each of the fiscal years 2002-2003 and 2003-2004. Up to ten percent (10%) of the amount for each of the fiscal years 2001-2002, 2002-2003, and 2003-2004 is available in that fiscal year, at the discretion of the Secretary of Transportation, for:

a. Highway improvement projects that further economic growth and development in small urban and rural areas, that are in the Transportation Improvement Program, and that are individually approved by the Board of Transportation; or

b. Highway improvements that further economic development in the State and that are individually approved by the Board of Transportation.

(2) For preliminary engineering costs not included in the current year Transportation Improvement Program. — Fifteen million dollars ($15,000,000) in each of the fiscal years 2001-2002, 2002-2003, and 2003-2004.

(3) For computerized traffic signal systems and signal optimization projects. — Fifteen million dollars ($15,000,000) in each of the fiscal years 2001-2002, 2002-2003, and 2003-2004.

(4) For public transportation twenty million dollars ($20,000,000) in fiscal year 2001-2002, twenty-five million dollars ($25,000,000) in fiscal year 2002-2003, and seventy-five million dollars ($75,000,000) in fiscal year 2003-2004.

(5) For small urban construction projects. — Seven million dollars ($7,000,000) in fiscal year 2002-2003.

Funds authorized for use by the Department pursuant to this subsection shall remain available to the Department until expended.

(a2) Repealed by Session Laws 2002-126, s. 26.4(b), effective July 1, 2002.

(a3) The Department may obligate three hundred million dollars ($300,000,000) in fiscal year 2003-2004 and four hundred million dollars ($400,000,000) in fiscal year 2004-2005 of the cash balance of the Highway Trust Fund for the following purposes:

(1) Six hundred thirty million dollars ($630,000,000) for highway system preservation, modernization, and maintenance, including projects to enhance safety, reduce congestion, improve traffic flow, reduce accidents, upgrade pavement widths and shoulders, extend pavement life, improve pavement smoothness, and rehabilitate or replace deficient bridges; and for economic development transportation projects recommended by local officials and approved by the Board of Transportation.

(2) Seventy million dollars ($70,000,000) for regional public transit systems, rural and urban public transportation system facilities, regional transportation and air quality initiatives, rail system track improvements and equipment, and other ferry, bicycle, and pedestrian improvements. For any project or program listed in this subdivision for which the Department receives federal funds, use of funds pursuant to this subdivision shall be limited to matching those funds.

Funds authorized for obligation and use by the Department pursuant to this subsection shall remain available to the Department until expended.

(a4) Project selection pursuant to subsection (a3) of this section shall be based on identified and documented need. Funds expended pursuant to subdivision (1) of subsection (a3) of this section shall be distributed in accordance with the distribution formula in G.S. 136-17.2A. No funds shall be expended pursuant to subsection (a3)(1) of this section on any project that does not meet Department of Transportation standards for road design, materials, construction, and traffic flow.

(a5) The Department shall report to the Joint Legislative Transportation Oversight Committee, on or before September 1, 2003, on its intended use of funds pursuant to subsection (a3) of this section. The Department shall report to the Joint Transportation Appropriations Subcommittee, on or before May 1, 2004, on its actual current and intended future use of funds pursuant to subsection (a3) of this section. The Department shall certify to the Joint Legislative Transportation Oversight Committee each year, on or before November 1, that use of the Highway Trust Fund cash balances for the purposes listed in subsection (a3) of this section will not adversely affect the delivery schedule of any Highway Trust Fund projects. If the Department cannot certify that the full amounts authorized in subsection (a3) of this section are available, then the Department may determine the amount that can be used without adversely affecting the delivery schedule and may proportionately apply that amount to the purposes set forth in subsection (a3) of this section.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four percent (4%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section for the 2003-2004 fiscal year and three and eight-tenths percent (3.8%) thereafter, may be used each fiscal year by the Department for expenses to administer the Trust Fund. Operation and project development costs of the North Carolina Turnpike Authority are eligible administrative expenses under this subsection. Any funds allocated to the Authority pursuant to this subsection shall be repaid by the Authority from its toll revenue as soon as possible, subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority's revenue bonds. Beginning one year after the Authority begins collecting tolls on a completed Turnpike Project, interest shall accrue on any unpaid balance owed to the Highway Trust Fund at a rate equal to the State Treasurer's average annual yield on its investment of Highway Trust Fund funds pursuant to G.S. 147-6.1. Interest earned on the unpaid balance shall be deposited in the Highway Trust Fund upon repayment. The sum up to the amount anticipated to be necessary to meet the State matching funds requirements to receive federal-aid highway trust funds for the next fiscal year may be set aside for that purpose. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct projects on segments or corridors of the Intrastate System as described in G.S. 136-178 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

The Department must administer funds allocated under subdivisions (1), (2), and (4) of this subsection in a manner that ensures that sufficient funds are available to make the debt service payments on bonds issued under the State Highway Bond Act of 1996 as they become due.

(b1) The Secretary may authorize the transfer of funds allocated under subdivisions (1) through (4) of subsection (b) of this section to other projects that are ready to be let and were to be funded from allocations to those subdivisions. The Secretary shall ensure that any funds transferred pursuant to this subsection are repaid promptly and in any event in no more than four years. The Secretary shall certify, prior to making any transfer pursuant to this subsection, that the transfer will not affect the delivery schedule of Highway Trust Fund projects in the current Transportation Improvement Program. No transfers shall be allowed that do not conform to the applicable provisions of the equity formula for distribution of funds, G.S. 136-17.2A. If the Secretary authorizes a transfer pursuant to this subsection, the Secretary shall report that decision to the next regularly scheduled meetings of the Joint Legislative Commission on Governmental Operations, the Joint Legislative Transportation Oversight Committee, and to the Fiscal Research Division.

(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund may be used, the amount of federal funds received plus the amount of any funds from the Highway Fund that were used to match the federal funds may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) **(Effective until July 1, 2007)** A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143-28.1 only for the two bienniums following the year in which the contract is let.

(d) **(Effective July 1, 2007)** A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143C-6-11 only for the two bienniums following the year in which the contract is let. (1989, c. 692, s. 1.1; c. 770, ss. 68.2, 74.6; 1989 (Reg. Sess., 1990), c. 1024, s. 46(a), (b); 1991, c. 193, s. 9; c. 280, s. 1; c. 689, s. 62; 1995, c. 390, s. 27; 1995 (Reg. Sess., 1996), c. 590, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 19.4(a); 1998-212, s. 27.2; 1999-237, s. 27.1; 2000-140, s. 31; 2001-424, ss. 27.1, 27.23(d), 27.23(e), 27.23(f); 2002-126, ss. 26.4(a), 26.4(b), 26.9(b); 2002-133, s. 3; 2002-159, s. 41.5; 2003-284, ss. 29.4, 29.22; 2003-383, ss. 1, 2, 3; 2004-124, ss. 30.3(a), 30.3(b), 30.21(b); 2006-203, s. 78.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 2007. The second version of subsection (d) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2005-276, s. 2.2(f), as amended by Session Laws 2006-66, s. 2.2(e), provides: "Notwithstanding G.S. 105-187.9(b)(1), the sum to be transferred under that subdivision for the 2005-2006 fiscal year is two hundred fifty million dollars ($250,000,000) and for the 2006-2007 fiscal year is fifty-five million dollars ($55,000,000)."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 78, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-6-11" for "G.S. 143-28.1" in subsection (d).

§ 136-182. (Effective until July 1, 2007) Supplement for secondary road construction.

Funds are allocated from the Trust Fund to increase allocations for secondary road construction made under G.S. 136-44.2A so that all State-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day can be paved by the 2009-2010 fiscal year. If all the State-maintained roads in a county have been paved under G.S. 136-44.7, except those that have unavailable rights-of-way or for which environmental permits cannot be approved to allow for paving, then the funds may be used for safety improvements on the paved or unpaved secondary roads in that county.

The Department shall make every effort to acquire right-of-way for the purpose of paving unpaved State secondary roads included in the annual secondary road program. The Division Engineer is authorized to reduce the width of a right-of-way to less than 60 feet to pave an unpaved secondary road with the allocated funds, provided that in all circumstances the safety of the public is not compromised and the minimum accepted design practice is satisfied. (1989, c. 692, s. 1.1; 2003-112, s. 2; 2004-124, s. 30.21(e); 2006-258, s. 3.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 136-182.

Effect of Amendments. —

Session Laws 2006-258, s. 3, effective August 23, 2006, added the second paragraph.

§ 136-182. (Effective July 1, 2007) Supplement for secondary road construction.

Funds are allocated from the Trust Fund to increase allocations for secondary road improvement made under G.S. 136-44.2A so that all State-maintained unpaved secondary roads eligible for paving pursuant to G.S. 136-44.5(a) can be paved by the 2009-2010 fiscal year.

Allocations of these funds shall be based on the percentage proportion of the number of miles in the county of State-maintained unpaved secondary roads that are eligible to be paved under G.S. 136-44.5(a) bears to the total number of miles in the State of State-maintained unpaved secondary roads that are eligible to be paved.

As an exception to the formula for the allocation of these funds, the Department shall, beginning in the 2006-2007 fiscal year and until the 2009-2010 fiscal year, set aside up to five million dollars ($5,000,000) to pay for the paving of any unpaved secondary road that had previously been determined to be ineligible for paving.

Beginning in fiscal year 2010-2011, allocations from the Trust Fund shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage.

The Department shall make every effort to acquire right-of-way for the purpose of paving unpaved State secondary roads included in the annual secondary road program. The Division Engineer is authorized to reduce the width of a right-of-way to less than 60 feet to pave an unpaved secondary road with the allocated funds, provided that in all circumstances the safety of the public is not compromised and the minimum accepted design practice is satisfied. (1989, c. 692, s. 1.1; 2003-112, s. 2; 2004-124, s. 30.21(e); 2005-404, s. 3; 2006-258, ss. 1, 3, 4.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as as in effect until July 1, 2007, see the preceding section, also numbered G.S. 136-182.

Editor's Note. — Session Laws 2006-258, s. 5, provides: "The Joint Legislative Transportation Oversight Committee shall conduct a study of the cost of paving and maintenance of both paved and unpaved secondary roads in different geographic areas of the State. The Committee shall complete its report by March 1, 2007."

Effect of Amendments. — Session Laws 2005-404, s. 3, as amended by Session Laws 2006-258, s. 1, effective July 1, 2007, rewrote the first paragraph; and added the second through fourth paragraphs.

Session Laws 2006-258, s. 3, effective August 23, 2006, added the last paragraph.

Session Laws 2006-258, s. 4, effective July 1, 2007, substituted "Department shall" for "Department may" in the third paragraph.

Chapter 138.

Salaries, Fees and Allowances.

Sec.
138-4. (Effective July 1, 2007) Governor to set salaries of administrative officers; exceptions; longevity pay.

§ 138-4. (Effective July 1, 2007) Governor to set salaries of administrative officers; exceptions; longevity pay.

The salaries of all State administrative officers not subject to the State Personnel Act shall be set by the Governor, unless a law provides otherwise.

Whenever by law it is provided that a salary shall be fixed or set by the General Assembly in the Current Operations Appropriations Act, and that office or position is filled by appointment of the Governor, or the appointment is subject to the approval of the Governor, or is made by a commission a majority of whose members are appointed by the Governor, then the Governor may, increase or decrease the salary of a new appointee by a maximum of ten percent (10%) over or under the salary of that position as provided in the Current Operations Appropriations Act, such increased or decreased salary to remain in effect until changed by the General Assembly or until the end of the fiscal year, whichever occurs first. The Governor under this paragraph may not increase the salary of any nonelected official above the level set in the Current Operations Appropriations Act for any member of the Council of State. This section does not apply to any office filled by election by the people, and does not apply to any office in the legislative or judicial branches.

Officials whose salaries are covered by the provisions of this section shall be eligible for longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1947, c. 898; 1957, c. 541, s. 1; 1983, c. 717, s. 49; 1983 (Reg. Sess., 1984), c. 1034, ss. 164, 216; 1985 (Reg. Sess., 1986), c. 955, ss. 51-53; 1987, c. 738, s. 32(a); 1991, c. 542, s. 4; 2006-203, s. 79.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 79, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former third paragraph which read: "Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission."

Chapter 138A.

State Government Ethics Act.

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Violation Consequences.

138A-45. Violation consequences.

ARTICLE 1.

General Provisions.

§ 138A-1. Title.

This Chapter shall be known and may be cited as the "State Government Ethics Act". (2006-201, s. 1.)

Editor's Note. — Session Laws 2006-201, s. 25, made this Chapter effective October 1, 2006, and applicable to covered persons and legislative employees, to gifts received, to acts and conflicts of interest that arise, and to offenses committed, on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

The preamble to Session Laws 2006-201 reads as follows: "Whereas, the people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest; and

"Whereas, to maintain the public trust, it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence; and

"Whereas, elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions; and

"Whereas, acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted should not be used to advance narrow interests for oneself or others; and

"Whereas, self-interest, partiality, and prejudice have no place in decisionmaking for the public good; and

"Whereas, public officials must exercise their duties responsibly with skillful judgment and energetic dedication; and

"Whereas, public officials must exercise discretion with sensitive information pertaining to public and private persons and activities; and

"Whereas, to maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect; and

"Whereas, because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists;

"Now, therefore, The General Assembly of North Carolina enacts:"

Session Laws 2006-201, s. 22, provides: "The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer."

Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

§ 138A-2. Purpose.

The purpose of this Chapter is to ensure that elected and appointed State agency officials exercise their authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence. To this end, it is the intent of the General Assembly in this Chapter to ensure that standards of ethical conduct and standards regarding conflicts of interest are clearly established for elected and appointed State agency officials, that the State continually educates these officials on matters of ethical conduct and conflicts of interest, that potential and actual conflicts of interests are identified and resolved, and that violations of standards of ethical conduct and conflicts of interest are investigated and properly addressed. (2006-201, s. 1.)

§ 138A-3. Definitions.

The following definitions apply in this Chapter:

(1) Board. — Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the Commission, except for those public bodies that have only advisory authority.

(2) Business. — Any of the following organized for profit:
  a. Association.
  b. Business trust.
  c. Corporation.
  d. Enterprise.
  e. Joint venture.
  f. Organization.
  g. Partnership.
  h. Proprietorship.

i. Vested trust.

j. Every other business interest, including ownership or use of land for income.

(3) Business with which associated. — A business in which the person or any member of the person's immediate family does any of the following:

a. Is an employee.

b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.

c. Owns a legal, equitable, or beneficial interest of ten thousand dollars ($10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust.

For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.

b. The fund is publicly traded, or the fund's assets are widely diversified.

(4) Commission. — The State Ethics Commission.

(5) Committee. — The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.

(6) Compensation. — Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, reported as required by Article 22A of Chapter 163 of the General Statutes.

(7) Confidential information. — Information defined as confidential by the law.

(8) Constitutional officers of the State. — Officers whose offices are established by Article III of the North Carolina Constitution.

(9) Contract. — Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.

(10) Covered person. — A legislator, public servant, or judicial officer, as identified by the Commission under G.S. 138A-11.

(11) Economic interest. — Matters involving a business with which associated or a nonprofit corporation or organization with which associated.

(12) Employing entity. — For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For legislative employees, it is the authority that hired the individual. For judicial employees, it is the Chief Justice.

(13) Extended family. — Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal ascendant, spouse's lineal descendant, spouse's sibling, and the spouse of any of these persons.

(14) Filing person. — A person required to file a statement of economic interest under G.S. 138A-22.

(15) Gift. — Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

  a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.
  b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.
  c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
  d. Academic or athletic scholarships based on the same criteria as applied to the public.
  e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(16) Honorarium. — Payment for services for which fees are not legally or traditionally required.

(17) Immediate family. — An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.

(18) Judicial employee. — The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars ($60,000) or more.

(19) Judicial officer. — Justice or judge of the General Court of Justice, district attorney, clerk of court, or any person elected or appointed to any of these positions prior to taking office.

(20) Legislative action. — As the term is defined in G.S. 120C-100.

(21) Legislative employee. — As the term is defined in G.S. 120C-100.

(22) Legislator. — A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.

(23) Lobbying. — As the term is defined in G.S. 120C-100.

(24) Nonprofit corporation or organization with which associated. — Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.

(25) Official action. — Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.

(26) Participate. — To take part in, influence, or attempt to influence, including acting through an agent or proxy.

(27) Person. — Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.

(28) Political party. — Either of the two largest political parties in the State based on statewide voter registration at the applicable time.

(29) Public event. — Any of the following:

- a. For legislators and legislative employees:
  - 1. An organized gathering of persons open to the general public to which all legislators or legislative employees are invited to attend.
  - 2. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, a joint commission, or a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, and one of the following apply:
    - I. At least 10 individuals associated with the person actually attend, other than the legislator or legislative employee, or the immediate family of the legislator or legislative employee.
    - II. All shareholders, employees, board members, officers, members, or subscribers of the person located in North Carolina are notified and invited to attend.
    - III. The person is a governmental body and the gathering is subject to the open meetings law.
- b. For public servants:
  - 1. An organized gathering of individuals open to the general public to which at least 10 public servants are invited to attend.
  - 2. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which at least 10 public servants are invited to attend.
  - 3. An organized gathering of a person to which at least 10 public servants are invited to attend and to which at least 10 individuals, other than the public servant, or the public servant's immediate family, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend.

(30) Public servants. — All of the following:

- a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.
- b. Employees of the Office of the Governor.
- c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.
- d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.
- e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.
- f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.
- g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.

h. Judicial employees.
i. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.
j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
l. Members of the Commission.
m. Persons under contract with the State working in or against a position included under this subdivision.

(31) Vested trust. — A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:
a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and
b. The fund is publicly traded, or the fund's assets are widely diversified. (2006-201, s. 1.)

§ 138A-4. Application to Lieutenant Governor.

For purposes of this Chapter, the Lieutenant Governor shall be considered a legislator when carrying out the Lieutenant Governor's duties under Sec. 13 of Article II of the Constitution, and a public servant for all other purposes. (2006-201, s. 1.)

§ 138A-5: Reserved for future codification purposes.

ARTICLE 2.

State Ethics Commission.

§ 138A-6. State Ethics Commission established.

There is established the State Ethics Commission. (2006-201, s. 1.)

Editor's Note. — For effective date and applicability of this Chapter, see Editor's note at G.S. 138A-1.

§ 138A-7. Membership.

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom shall be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom shall be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

(1) Two members appointed by the Governor shall serve an initial term of one year.

(2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.

(3) Two members appointed by the Governor shall serve initial terms of three years.

(4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance. Members appointed by the Governor may be removed by the Governor. Members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be removed by the Governor upon the recommendation of the Speaker. Members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be removed by the Governor upon the recommendation of the President Pro Tempore.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

(1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.

(2) Hold office in any political party above the precinct level.

(3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.

(4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or 138-7, as applicable. (2006-201, s. 1.)

§ 138A-8. Meetings and quorum.

The Commission shall meet at least quarterly and at other times as called by its chair or by four of its members. In the case of a vacancy in the chair, meetings may be called by the vice-chair. Five members of the Commission constitute a quorum. (2006-201, s. 1.)

§ 138A-9. Staff and offices.

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting. (2006-201, s. 1.)

§ 138A-10. Powers and duties.

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

(1) Provide reasonable assistance to covered persons in complying with this Chapter.
(2) Develop readily understandable forms, policies, and procedures to accomplish the purposes of the Chapter.
(3) Identify and publish the following:
  a. A list of nonadvisory boards.
  b. The names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.
(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.
(5) Conduct inquiries of alleged violations against judicial officers, legislators, and legislative employees in accordance with G.S. 138A-12.
(6) Conduct inquiries into alleged violations against public servants in accordance with G.S. 138A-12.
(7) Render advisory opinions in accordance with G.S. 138A-13 and G.S. 120C-102.
(8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 138A-14.
(9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.
(10) Adopt procedures and guidelines to implement this Chapter.
(11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.
(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(f), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(h), the number of complaints referred for appropriate action under G.S. 138A-12(h) or G.S. 138A-12(k)(3), and the number of complaints pending action by the Commission.

(13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.

(b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section. (2006-201, s. 1.)

§ 138A-11. Identify and publish names of covered persons and legislative employees.

The Commission shall identify and publish at least quarterly a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. The Commission shall also identify and publish at least annually a listing of all boards to which this Chapter applies. This listing may be published electronically on a public Internet Web site maintained by the Commission. (2006-201, s. 1.)

§ 138A-12. Inquiries by the Commission.

(a) Jurisdiction. — The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall conduct inquiries of complaints alleging unethical conduct by covered persons and legislative employees, as set forth in this section.

(b) Institution of Proceedings. — On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an inquiry into any of the following:

(1) The application or alleged violation of this Chapter.

(2) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.

(3) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.

(4) An alleged violation of G.S. 126-14.

Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(c) Complaint. —

(1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.

(2) Except as provided in subsection (d) of this section, a complaint filed under this Chapter must be filed within two years of the date the complainant knew or should have known of the conduct upon which the complaint is based.

(3) The Commission may decline to accept, refer, or conduct an inquiry into any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer, or conduct an inquiry into a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint inquiry pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the covered person or legislative employee who is the subject of the complaint and the employing entity, within 30 days of the filing.

(d) Conduct of Inquiry of Complaints by the Commission. — The Commission shall conduct an inquiry into all complaints properly before the Commission in a timely manner. The Commission shall initiate an inquiry into a complaint within 60 days of the filing of the complaint. The Commission is authorized to initiate inquiries upon request of any member of the Commission if there is reason to believe that a covered person or legislative employee has or may have violated this Chapter. Commission-initiated complaint inquiries under this section shall be initiated within two years of the date the Commission knew of the conduct upon which the complaint is based, except when the conduct is material to the continuing conduct of the duties in office. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Commission may take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting inquiries.

(e) Covered Person and Legislative Employees Cooperation With Inquiry. — Covered persons and legislative employees shall promptly and fully cooperate with the Commission in any Commission-related inquiry. Failure to cooperate fully with the Commission in any inquiry shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. — If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a covered person or legislative employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint.

(g) Commission Inquiries. — If at the end of its preliminary inquiry, the Commission determines to proceed with further inquiry into the conduct of a covered person or legislative employee, the Commission shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the inquiry and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the Commission.

(h) Action on Inquiries. — The Commission shall conduct inquiries into complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:

(1) For public servants, decide to proceed with a hearing under subsection (i) of this section.

(2) For legislators, except the Lieutenant Governor, refer the complaint to the Committee.

(3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, to the senior resident superior court judge of the district or county for complaints against district attorneys, or to the chief district court judge for the district or county for complaints against clerks of court.

(4) For legislative employees, refer the complaint to the employing entity.

(i) Hearing. —

(1) The Commission shall give full and fair consideration to all complaints received against a public servant. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a hearing, a hearing shall be held.

(2) The Commission shall send a notice of the hearing to the complainant, and the public servant. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.

(3) The Commission shall make available to the public servant prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.

(4) At any hearing held by the Commission:

a. Oral evidence shall be taken only on oath or affirmation.

b. The hearing shall be held in closed session unless the public servant requests that the hearing be held in open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.

c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Settlement of Inquiries. — The public servant who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the inquiry or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the inquiry is subject to the approval of the Commission.

(k) Disposition of Inquiries. — After hearing, the Commission shall dispose of the matter in one or more of the following ways:

(1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.

(2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.

(3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:

a. Issue a private admonishment to the public servant and notify the employing entity, if applicable. Such notification shall be treated as part of the personnel record of the public servant.

b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.

c. Refer the matter for appropriate action to the Chief Justice for judicial employees.

d. Refer the matter to the Principal Clerks of the House of Representatives and Senate of the General Assembly for constitutional officers of the State.

e. Refer the matter for appropriate action to the principal clerk of the house of the General Assembly that elected the public servant for members of the Board of Governors.

(*l*) Notice of Dismissal. — Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, against legislative employees to the employing entity for legislative employees, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court.

(m) Reports and Records. — The Commission shall render the results of its inquiry in writing. When a matter is referred under subdivision (h)(2) and (3), or subsection (k) of this section, the Commission's report shall consist of the complaint, response, and detailed results of its inquiry in support of the Commission's finding of a violation under this Chapter.

(n) Confidentiality. — Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an inquiry under this section shall be confidential and not matters of public record, except when the covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes public sanctions. At such time as public sanctions are imposed on a covered person, the complaint, response, and Commission's report to the employing entity shall be made public.

(o) Recommendations of Sanctions. — After referring a matter under subsection (k) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

(1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for a public servant as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.
(2) The number of ethics violations.
(3) The severity of the ethics violations.
(4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.
(5) Whether the ethics violations were inadvertent or intentional.
(6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.
(7) Whether the public servant has previously been advised or warned by the Commission.
(8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(e).
(9) The public servant's motivation or reason for the improper conduct or action, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(p) Authority of Employing Entity. — Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entities to discipline the covered person or legislative employee.

(q) Continuing Jurisdiction. — The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person, who was formerly a public servant or legislative employee, ceases to be a public servant or legislative employee for any investigation that commenced prior to the date the public servant or legislative employee ceases to be a public servant or legislative employee.

(r) Subpoena Authority. — The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(s) Reports. — The number of complaints referred under this section shall be reported under G.S. 138A-10(a)(12).

(t) Concurrent Jurisdiction. — Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission. (2006-201, s. 1.)

§ 138A-13. Advisory opinions.

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. On its own motion, the Commission may render advisory opinions on specific questions involving the meaning and application of this Chapter. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from both of the following:

(1) Investigation by the Commission.

(2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render recommended advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Until action is taken by the Committee under G.S. 120-104, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

(1) Investigation by the Committee or Commission.

(2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. Except for the Lieutenant Governor, the immunity granted under this subsection shall not apply after the time the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions, and advisory opinions issued under this section, are confidential and not public records.

(f) This section shall not apply to judicial officers. (2006-201, s. 1.)

§ 138A-14. Ethics education program.

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of the person's election, reelection, appointment, or employment in a manner as the Commission and Committee deem appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

(i) This section shall not apply to judicial officers. (2006-201, s. 1.)

§ 138A-15. Duties of heads of State agencies.

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment, or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff. (2006-201, s. 1.)

§§ 138A-16 through 138A-20: Reserved for future codification purposes.

ARTICLE 3.

Public Disclosure of Economic Interests.

§ 138A-21. Purpose.

The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests. Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information. (2006-201, s. 1.)

Editor's Note. — For effective date and applicability of this Chapter, see Editor's note at G.S. 138A-1.

§ 138A-22. Statement of economic interest; filing required.

(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (d) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Notwithstanding subsection (a) of this section, public servants, under G.S. 138A-3(30)j. and k., who have submitted a statement of economic interest under subsection (a) of this section, may be hired, appointed, or elected provisionally prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article, subject to dismissal or removal based on the Commission's evaluation.

(d) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(e) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(f) Within 10 days of the filing deadline for office of a covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of each candidate who have filed as a candidate for office as a covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Elections under this section.

(g) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other covered persons the appropriate forms needed to comply with this Article. (2006-201, s. 1.)

§ 138A-23. Statements of economic interest as public records.

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records. (2006-201, s. 1.)

§ 138A-24. Contents of statement.

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

(1) The name, home address, occupation, employer, and business of the person.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person and the filing person's immediate family. This list shall include the following:

  a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.

  b. Real estate that is currently leased or rented to or from the State.

  c. Personal property sold to or bought from the State within the preceding two years.

  d. Personal property currently leased or rented to or from the State.

  e. The name of each publicly owned company.

  f. The name of each nonpublicly owned company or business entity, including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

  g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

h. A list of all nonpublicly owned businesses of which the person is an officer, employee, director, partner, owner, or member or manager of a limited liability company.

i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.

j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

k. A list of all liabilities, excluding indebtedness on the filing person's personal residence, by type of creditor and debtor.

l. A list of any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do business with the State or receive State funds, if known, and a brief description of the nature of the business, or which with due diligence could reasonably be known.

(3) A list of each source (not specific amounts) of income of more than five thousand dollars ($5,000) received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains, and business income.

(4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:
a. Administrative law.
b. Admiralty law.
c. Corporate law.
d. Criminal law.
e. Decedents' estates law.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation law.
k. Real property law.
l. Securities law.
m. Taxation law.
n. Utilities regulation law.

(5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

(6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator or a judicial officer.

(7) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction. This subdivision does not apply to a legislator, a judicial officer, or that person's immediate family.

(8) A list of all things of monetary value greater than two hundred dollars ($200.00) given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for the purpose of lobbying, if such things where given by a person not required to report under Chapter 120C of the General Statutes, or from the person's extended family. The list shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.

(9) A list of any felony convictions of the filing person.

(10) Any other information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(b) The Supreme Court, the Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall be subject to the provisions of G.S. 138A-25.

(c) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(e) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

(1) The filing person who submitted the statement.
(2) The head of the agency in which the filing person serves.
(3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.
(4) The Chief Justice for judicial officers and judicial employees.
(5) The appointing or hiring authority for those public servants not under the Governor's authority.
(6) The State Board of Elections for those filing persons who are elected.
(7) The Committee, together with a copy of the statement of economic interest, for legislators. (2006-201, s. 1.)

§ 138A-25. Failure to file.

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars ($250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

§ 138A-26. Concealing or failing to disclose material information.

A filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

§§ 138A-28 through 138A-30: Reserved for future codification purposes.

ARTICLE 4.

Ethical Standards for Covered Persons.

§ 138A-31. Use of public position for private gain.

(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit, direct or indirect, to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a directory or biographical listing, or the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3). Disclosure of a covered person's position to an existing or prospective customer, supplier, or client is not considered advertising for purposes of this subsection when the disclosure could reasonably be considered material by the customer, supplier, or client.

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, magazines, or billboards, that contains that covered person's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fund-raising on behalf of and aired on public radio or public television. (2006-201, s. 1.)

Editor's Note. — For effective date and applicability of this Chapter, see Editor's note at G.S. 138A-1.

§ 138A-32. Gifts.

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal as defined in G.S. 120C-100.

(d) No public servant shall knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

(1) Is doing or is seeking to do business of any kind with the public servant's employing entity.

(2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.

(3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

(1) Food and beverages for immediate consumption in connection with public events.

(2) Informational materials relevant to the duties of the covered person or legislative employee.

(3) Reasonable actual expenditures of the covered person or legislative employee for food, beverages, registration, travel, lodging, other incidental items of nominal value, and entertainment, in connection with (i) a covered person's or legislative employee's attendance at an educational meeting for purposes primarily related to the public duties and responsibilities of the covered person or legislative employee, or in order for the covered person or legislative employee to participate as a speaker or member of a panel; (ii) a legislator's or legislative employee's attendance and participation in meetings of a state, regional, national, or international legislative organization of which the General Assembly is a member or that the legislator or legislative employee is a member or participant of by virtue of that person's public position, or as a member of a board, agency, or committee of such organization; or (iii) a public servant's attendance and participation in meetings as a member of a board, agency, or committee of a state, regional, national, or international legislative organization of which the public servant's agency is a member or the public servant is a member by virtue of that person's public position, provided the following conditions are met:

a. The reasonable actual expenditures shall be made by a lobbyist's principal, and not a lobbyist.

b. Any educational meeting must be attended by at least 10 or more participants, have a formal agenda, and notice of the meeting has been given at least 10 days in advance.

c. Any food, beverages, or entertainment must be provided to all attendees or defined groups of 10 or more attendees.

d. Any entertainment must be incidental to the principal agenda of the educational meeting.

(4) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.

(5) Gifts accepted on behalf of the State for the benefit of the State.

(6) Anything generally made available or distributed to the general public or all other State employees by lobbyists or lobbyist's principals.

(7) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.

(8) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is food and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:

a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.

b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.

c. A tangible gift, other than food or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.

(9) Gifts of personal property valued at less than one hundred dollars ($100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.

(f) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g) A prohibited gift shall be declined, returned, paid for at fair market value, or donated immediately to charity or the State.

(h) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

(1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.

(2) The employing entity's work time or resources are used.

(3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a gift for purposes of subsection (c) of this section.

(i) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86. (2006-201, s. 1.)

§ 138A-33. Other compensation.

A public servant or legislative employee shall not solicit or receive personal financial gain, other than that received by the public servant or legislative employee from the State, or with the approval of the employing entity, for acting in the public servant's or legislative employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or legislative employee's duties. (2006-201, s. 1.)

§ 138A-34. Use of information for private gain.

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employee's extended family, or a person with whom or business with which the public servant or legislative employee is associated. A public servant or legislative employee shall not improperly use or improperly disclose any confidential information. (2006-201, s. 1.)

§ 138A-35. Other rules of conduct.

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees. (2006-201, s. 1.)

§ 138A-36. Public servant participation in official actions.

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself to the extent necessary, to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, partner, member or manager of a limited liability company, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter. (2006-201, s. 1.)

§ 138A-37. Legislator participation in official actions.

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has an economic interest in, or may reasonably and foreseeably benefit from the action, and if after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104. (2006-201, s. 1.)

§ 138A-38. Permitted participation exception.

Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

(1) The only interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with

which the covered person is associated as a member of a profession, occupation, or general class is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) When an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.

(3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission or Committee a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the Commission or Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.

(4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.

(5) When action is ministerial only and does not require the exercise of discretion.

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under G.S. 130-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies the Commission in writing that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest. (2006-201, s. 1.)

§ 138A-39. Disqualification to serve.

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) A decision under this section shall be considered a final decision for contested case purposes under Article 3 of Chapter 150B of the General Statutes.

(d) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties. (2006-201, s. 1.)

§ 138A-40. Employment and supervision of members of covered person's extended family.

A covered person or legislative employee shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or legislative employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public servant's extended family, except as specifically authorized by the public servant's or legislative employee's employing entity. (2006-201, s. 1.)

§ 138A-41. Other ethics standards.

Nothing in this Chapter shall prevent the Supreme Court, the Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations. (2006-201, s. 1.)

§§ 138A-42 through 138A-44: Reserved for future codification purposes.

ARTICLE 5.

Violation Consequences.

§ 138A-45. Violation consequences.

(a) Violation of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in this Chapter and for perjury under G.S. 138A-12 and G.S. 138A-24, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the Speaker of the House of Representatives, the Speaker of the House of Representatives may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the Speaker of the House of Representatives, the Governor at the recommendation of the Speaker of the House of Representatives may remove the offending public servant. For appointees of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the President Pro Tempore of the Senate, the Governor at the recommendation of the President Pro Tempore of the Senate may remove the offending public servant. For public servants elected to a board by either the Senate or House of Representatives, the electing house of the General Assembly shall exercise the discretion of whether to remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services Commission shall make or refer to the hiring authority all final decisions on the matter in which the offending legislative employee shall be disciplined. For public servants appointed or elected for The University of North Carolina or the Community Colleges System, the appointing or electing authority shall make all final decisions on the matter in which the offending public servant shall be disciplined. For any other public servant serving as a State employee, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) The willful failure of a legislator, other than the Lieutenant Governor, to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(g) The Commission may seek to enjoin violations of G.S. 138A-34. (2006-201, s. 1.)

Editor's Note. — For effective date and applicability for this Chapter, see Editor's note at G.S. 138A-1.

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

General Provisions.

Sec.
139-4. Powers and duties of Soil and Water Conservation Commission generally.
139-8. Powers of districts and supervisors.

ARTICLE 1.

General Provisions.

§ 139-4. Powers and duties of Soil and Water Conservation Commission generally.

(a) through (c) Repealed by Session Laws 1973, c. 1262, s. 38.

(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this Chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

(6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the Commission may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby.

(7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications.

(8) To supervise and review small watershed work plans pursuant to G.S. 139-41.2 and 139-47.

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes and the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control or the Community Conservation Assistance Program as provided by G.S. 139-8(b).

(11) To develop and implement a program for the approval of water quality and animal waste management systems technical specialists.

(12) To develop and approve best management practices for use in the water quality protection programs of the Department of Environment and Natural Resources and to adopt rules that establish criteria governing approval of these best management practices.

(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control and the Community Conservation Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the Secretary of Environment and Natural Resources. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1; 1959, c. 781, s. 5; 1961, c. 746, s. 2; 1965, c. 582, s. 2; c. 932; 1971, c. 396; 1973, c. 1262, s. 38; 1981, c. 326, s. 1; 1995, c. 519, s. 1; 1997-443, s. 11A.119(a); 2001-284, s. 1; 2006-78, s. 3.)

Editor's Note. —

Session Laws 2004-124, s. 12.7C, as amended by Session Laws 2006-38, s. 1, provides: "Before 1 September 2007, the requirements and qualifications for animal waste management systems technical specialists shall not be changed and the scope of the work that animal waste management systems technical specialists are authorized to perform shall not be decreased. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143-215.10B."

Session Laws 2006-38, s. 2, effective July 1, 2006, provides: "The Department of Environment and Natural Resources shall evaluate the training and qualification requirements for approval as an animal waste management systems technical specialist pursuant to G.S. 139-4(d)(11) to determine whether the current approval process ensures an appropriate level of knowledge and expertise to provide services related to the development, implementation, or operation of an animal waste management plan or animal waste management system. In conducting the study, the Department shall obtain input from representatives of interested parties, including the North Carolina Soil and Water Conservation Commission, the Department of Agriculture and Consumer Services, the Professional Engineers of North Carolina, Inc., the Natural Resources Conservation Service of the United States Department of Agriculture, the North Carolina Farm Bureau Federation, and other organizations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 15 November 2006."

Effect of Amendments. — Session Laws 2006-78, s. 3, effective July 10, 2006, rewrote subdivision (d)(9); in subdivision (d)(10), inserted "or the Community Conservation Assistance Program," and substituted "139-8(b)" for "139-8(13)"; and added "and the Community Conservation Assistance Program" near the end of subsection (e).

§ 139-8. Powers of districts and supervisors.

(a) A soil and water conservation district organized under the provisions of this Article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this Chapter:

(1) To conduct surveys and investigations relating to the character of soil erosion and floodwater and sediment damages, and to the conservation, utilization, and disposal of water, the development of water resources, and the preventive and control measures and works of improvement needed, to publish the results of such surveys and investigations, and to disseminate information concerning such preventive and control measures and works of improvement.

(2) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection (a), subdivision (3) of G.S. 139-2, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupiers of such lands or the necessary rights or interest in such lands.

(3) To cooperate, or enter into agreements with, and within the limits or appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupiers of land within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this Chapter.

(4) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this Chapter; and to sell, lease, or otherwise dispose of its property or interests therein in furtherance of the purposes and the provisions of this Chapter.

(5) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water and the development of water resources.

(6) To construct, improve, operate, and maintain such structures, works and projects as may be necessary or convenient for the performance of any of the operations authorized in this Chapter, including watershed improvement structures, works, and projects as well as any other structures, works, and projects which the district is authorized to undertake.

(7) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, utilization and disposal of water and development of water resources, within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(8) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any project for soil conservation, erosion control, erosion

prevention, flood prevention, or for the conservation, utilization, and disposal of water and development of water resources, or combinations thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained insofar as available from the Department of Environment and Natural Resources in cooperation with the United States Department of Agriculture.

(9) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this Chapter, to carry into effect its purposes and powers.

(10) As a condition to the extending of any benefits under this Chapter to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreement or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages therein.

(11) No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

(12) Nothing contained in this Chapter shall authorize or allow the withdrawal of water from a watershed or stream except to the extent and degree now permissible under the existing common and statute law of this State; nor to change or modify such existing common or statute law with respect to the relative rights of riparian owners or others concerning the use or disposal of water in the streams of this State; nor to authorize a district, its officers or governing body or any other person, firm, corporation (public or private), body politic or governmental agency to utilize or dispose of water except in the manner and to the extent permitted by the existing common and statute law of this State.

(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to G.S. 143-215.74 and to assist in the implementation and supervision of any other program intended to protect water quality administered by the Department of Environment and Natural Resources by providing technical assistance, allocating available grant monies, and providing any other assistance that may by required or authorized by any provision of federal or State law.

(b) A district supervisor may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes or the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes if:

1. The district supervisor does not vote on the application or attempt to influence the outcome of any action on the application; and
2. The application is approved by the Commission. (1937, c. 398, s. 8; 1939, c. 341; 1959, c. 781, s. 7; 1969, c. 711, s. 1; 1973, c. 1262, s. 38;

1977, c. 771, s. 4; 1989, c. 727, s. 218(93); 1995, c. 519, ss. 2, 3; 1997-443, s. 11A.119(a); 2006-78, s. 4.)

Effect of Amendments. — Session Laws 2006-78, s. 4, effective July 10, 2006, added "created pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes or the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes" in the introductory paragraph of subsection (b).

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1B.

North Carolina Museum of Art.

Sec.
140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.
140-5.15. Director of Museum of Art; appointment; dismissal; powers and duties; staff.

Article 2.

North Carolina Symphony Society.

140-9. (Effective July 1, 2007) Allocations from Contingency and Emergency Fund; expenditures.

Article 3.

North Carolina Art Society.

Sec.
140-12. (Effective until July 1, 2007) Department of Administration authorized to provide space for Art Society.
140-12. (Effective July 1, 2007) Department of Administration authorized to provide space for Art Society.
140-13. Audit.
140-14. North Carolina State Art Society within the North Carolina Museum of Art; promotion of public appreciation of art; etc.

ARTICLE 1B.

North Carolina Museum of Art.

§ 140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

(a) It is the duty of the Department of Cultural Resources to develop policy and to establish and enforce standards for resources, services, and programs involving the arts and the cultural aspects of the lives of the citizens of North Carolina. To attain these objectives, there is hereby established within the Department of Cultural Resources the Board of Trustees of the North Carolina Museum of Art.

(b) The Board of Trustees of the North Carolina Museum of Art shall consist of 29 members, chosen as follows:

(1) The Governor shall appoint 13 members, one from each congressional district in the State in accordance with G.S. 147-12(3b);
(2) The North Carolina State Art Society, Incorporated, shall elect four members;
(3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four members;
(4) The Board of Trustees of the North Carolina Museum of Art shall elect four members;
(5) The General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

All regular appointments or elections except those by the General Assembly shall be for terms of six years, except that each member shall serve until his successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All regular appointments by the General Assembly shall be for the then current legislative term, and no appointee of the General Assembly may be appointed to more than two consecutive terms of two years.

(c) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. All other vacancies occurring in the regular membership of the Board of Trustees prior to the expiration of a term shall be filled by the same authority and in the same manner as the vacating member was chosen, and the successor member so chosen shall serve for the remainder of the unexpired term of the vacating member.

(d) All initial appointments and elections to the Board of Trustees shall be made on July 1, 1980, or as soon as feasible thereafter except as provided in this subsection, and the terms of all except the legislative appointees shall expire on June 30, 1983, or June 30, 1986, as the case may be. In order to establish regularly overlapping terms, initial appointments and elections to the Board of Trustees shall be made as follows:

(1) Four members at large shall be appointed by the Governor for initial terms of three years and four members at large shall be appointed by the Governor for initial terms of six years.

(2) One member shall be elected by the North Carolina Art Society, Incorporated, for an initial term of three years and two members shall be elected by that Society for initial terms of six years.

(3) One member shall be elected by the North Carolina Museum of Art Foundation, Incorporated, for an initial term of three years and two members shall be elected by that Foundation for initial terms of six years.

(4) One member shall be elected by the Art Commission prior to July 1, 1980, for an initial term of three years and two members shall be elected by that Commission for initial terms of six years. Upon the expiration of the terms of those three members, their successors shall be elected by the Board of Trustees of the North Carolina Museum of Art.

(5) Three members shall be elected by the State Art Museum Building Commission to serve until the termination of that Commission or until June 30, 1983, whichever shall first occur. Upon the termination of the terms of those three members, should such termination occur prior to June 30, 1983, their successors shall be elected as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art; the terms of the successor members so elected shall expire on June 30, 1983. On July 1, 1983, or as soon as feasible thereafter, the successors of these three members shall be elected for terms of six years, as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art.

(6) The initial appointments by the General Assembly shall serve until June 30, 1983. Subsequent appointments shall be for two-year terms commencing July 1, 1983, and biennially thereafter.

(7) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 51.

Every vacancy occurring in the initial membership of the Board of Trustees prior to the expiration of a term of office shall be filled by the same authority and in the same manner as the vacating member was chosen and the successor member so appointed shall serve for the remainder of the unexpired term of the vacating member.

(e) Any member of the Board of Trustees may be removed from office by the authority that appointed or elected that member for misfeasance, malfeasance, or nonfeasance in office. In the case of an appointment made by the Governor, removal shall be made in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(f) A public officer who is appointed or elected to serve on the Board of Trustees shall be deemed to serve thereon as a trustee ex officio and his duties as a trustee shall be deemed additional duties of his primary public office.

(g) The Board of Trustees shall have a chairman, a vice-chairman, and such other officers as the Board deems necessary. The chairman shall be designated by the Governor from among the members of the Board. The vice-chairman shall be elected by and from among the members of the Board. The chairman and vice-chairman shall be chosen for terms of two years or for so long as they are members of the Board, whichever is the shorter period. The Director of the North Carolina Museum of Art shall serve as Secretary to the Board of Trustees and shall attend all meetings, except when the Board is considering issues related to the Director's performance of duties.

(h) The Board of Trustees shall meet at least once in each quarter. The Board may hold special meetings at any time and place within the State at the call of the chairman. The chairman may call a special meeting at his discretion, and he shall call a special meeting upon the written request of a majority of the authorized membership of the Board of Trustees.

(i) A majority of the authorized membership of the Board of Trustees shall constitute a quorum for the transaction of business.

(j) Members of the Board of Trustees who are officers or employees of State agencies or institutions shall receive from funds available to the Department of Cultural Resources subsistence and travel allowances at the rates authorized by G.S. 138-6. All other members of the Board of Trustees shall receive from funds available to the Department of Cultural Resources per diem and travel and subsistence allowances at the rates authorized by G.S. 138-5.

(k) All clerical and administrative services required by the Board of Trustees shall be supplied by the office of the Director of the North Carolina Museum of Art. (1979, 2nd Sess., c. 1306, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 49-52; 1987, c. 842, ss. 1, 2; 1991, c. 756, s. 35; 1995, c. 490, s. 8; 2001-486, s. 2.10; 2006-66, s. 22.22(b); 2006-221, s. 23.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 22.22(b), as added by Session Laws 2006-221, s. 23, effective July 1, 2006, substituted "North Carolina State Art Society" for "North Carolina Art Society" in subdivision (b)(2).

§ 140-5.15. Director of Museum of Art; appointment; dismissal; powers and duties; staff.

(a) The Secretary of Cultural Resources shall appoint the Director of the North Carolina Museum of Art from a list of not fewer than two nominees recommended by the Board of Trustees of the North Carolina Museum of Art.

(b) The Secretary of Cultural Resources may dismiss the Director unless two thirds of the authorized membership of the Board of Trustees shall vote to reverse that action in accordance with the following procedure: Upon dismissal of the Director, the Secretary shall give to the chairman of the Board of Trustees written notice of that action. This notice shall be sent to the chairman of the Board within 10 days after the Secretary makes a final decision on dismissal. The chairman shall promptly communicate the notice of dismissal to all other Board members. Board action to consider reversal of the Secretary's decision shall be taken at a regular or special meeting called pursuant to G.S. 140-5.13(h). Reversal of the Secretary's order of dismissal may be effected only by resolution adopted by an affirmative vote of two thirds of the authorized membership of the Board of Trustees at a meeting held within 30 days after the chairman of the Board receives from the Secretary written notice of dismissal of the Director. All ex officio members of the Board shall be entitled to vote on this question. The failure of two thirds of the authorized membership of the Board of Trustees to vote to reverse the Secretary's order of dismissal within 30 days after the chairman of the Board receives from the Secretary written notice of dismissal of the Director shall be deemed an affirmance of that order by the Board.

(c) The State-funded portion of the salary of the Director shall be fixed by the General Assembly in the Current Operations Appropriations Act.

(d) The Director shall have the following powers and duties:

(1) Under the supervision of the Board of Trustees, to direct and administer the North Carolina Museum of Art in accordance with the policies, rules, and regulations adopted by the Board of Trustees;
(2) To employ such persons as are necessary to perform the functions of the North Carolina Museum of Art and are provided for in the budget of the Museum and to promote, demote, and dismiss such persons in accordance with State personnel policies, rules, and regulations. This paragraph shall not apply to associate directors and curators;
(3) To serve as director of collections of the North Carolina Museum of Art;
(4) To serve as Secretary to the Board of Trustees.

(e) The Director, associate directors, and curators shall be exempt from the provisions of the State Personnel Act. The Board of Trustees shall adopt, subject to the approval of the Secretary of Cultural Resources, rules and regulations governing the employment, promotion, demotion, and dismissal of associate directors and curators. (1961, c. 731; 1973, c. 476, s. 38; 1979, 2nd Sess., c. 1306, s. 1; 1985, c. 122, s. 6; c. 479, s. 218; 1987, c. 827, s. 81; 2006-66, s. 22.22(g); 2006-221, s. 23.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 22.22(g), as added by Session Laws 2006-221, s. 23, effective July 1, 2006, inserted "State-funded portion of the" in subsection (c).

Article 2.

North Carolina Symphony Society.

§ 140-9. (Effective July 1, 2007) Allocations from Contingency and Emergency Fund; expenditures.

The Governor and Council of State are hereby authorized to allot such sums as they may deem appropriate, from the Contingency and Emergency Fund, to the North Carolina Symphony Society, to aid in carrying on the activities of the said Society. All expenditures made by said Society shall be subject to the provisions of the State Budget Act, Chapter 143C of the General Statutes. (1943, c. 755, s. 5; 1955, c. 1309; 2006-203, s. 80.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 80, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "the State Budget Act, Chapter 143C of the General Statutes" for "G.S. 143-1 to 143-34, inclusive" at the end of the section.

ARTICLE 3.

North Carolina Art Society.

§ 140-12. (Effective until July 1, 2007) Department of Administration authorized to provide space for Art Society.

Subject to the approval of the Governor, the Department of Administration is authorized and empowered to set apart, for the administration of the affairs of the North Carolina State Art Society, Incorporated, space in any of the public buildings in Wake County which may be so used without interference with the conduct of the business of the State. Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission. (1961, c. 1152; 1983, c. 717, ss. 52, 53; 1985 (Reg. Sess., 1986), c. 955, ss. 54, 55; 2006-66, s. 22.22(c); 2006-221, s. 23.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as amended July 1, 2007, see the following section, also numbered G.S. 140-12.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 22.22(c), as added by Session Laws 2006-221, s. 23, effective July 1, 2006, inserted "North Carolina" preceding "State Art Society".

§ 140-12. (Effective July 1, 2007) Department of Administration authorized to provide space for Art Society.

Subject to the approval of the Governor, the Department of Administration is authorized and empowered to set apart, for the administration of the affairs of the North Carolina State Art Society, Incorporated, space in any of the public buildings in Wake County which may be so used without interference with the conduct of the business of the State. (1961, c. 1152; 1983, c. 717, ss. 52, 53; 1985 (Reg. Sess., 1986), c. 955, ss. 54, 55; 2006-66, s. 22.22(c); 2006-203, s. 81; 2006-221, s. 23.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 140-12.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-66, s. 22.22(c), as added by Session Laws 2006-221, s. 23, effective July 1, 2006, inserted "North Carolina" preceding "State Art Society".

Session Laws 2006-203, s. 81, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last sentence of the section, which read: "Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission."

§ 140-13. Audit.

The operations of the North Carolina State Art Society, Inc., shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1961, c. 1152; 1977, c. 702, s. 1; 1983, c. 913, s. 29; 2006-66, s. 22.22(d); 2006-221, s. 23.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 22.22(d), as added by Session Laws 2006-221, s. 23, effective July 1, 2006, inserted "State" preceding "Art Society".

§ 140-14. North Carolina State Art Society within the North Carolina Museum of Art; promotion of public appreciation of art; etc.

The North Carolina State Art Society, Incorporated, is administratively located within the North Carolina Museum of Art. It shall be the duty of the North Carolina State Art Society to promote the public appreciation of art and its role in the development of civilization; to organize State and regional arts advocacy initiatives; and to do all other things deemed necessary to advance the objectives of the Society. (1961, c. 1152; 1977, c. 702, s. 2; 2006-66, s. 22.22(a); 2006-221, s. 23.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 22.22(a), as added by Session Laws 2006-221, s. 23, effective July 1, 2006, rewrote the section heading; and rewrote the section.

Chapter 142.

State Debt.

Article 8.

State Energy Conservation Finance Act.

Sec.
142-63. Authorization of financing contract.
142-64. Procedure for incurrence or issuance of financing contract.

ARTICLE 8.

State Energy Conservation Finance Act.

§ 142-63. Authorization of financing contract.

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate principal amount payable by the State under financing contracts entered pursuant to this Article shall not exceed one hundred million dollars ($100,000,000) at any one time. (2002-161, s. 9; 2006-190, s. 6.)

Effect of Amendments. — Session Laws 2006-190, s. 6, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date, substituted "one hundred million dollars ($100,000,000)" for "fifty million dollars ($50,000,000)".

§ 142-64. Procedure for incurrence or issuance of financing contract.

(a) When a State governmental unit has solicited a guaranteed energy conservation measure, the State governmental unit shall request that the State Treasurer approve the State governmental unit's entering into a financing contract to finance the cost of the energy conservation measure. In connection with the request, the State governmental unit shall provide to the State Treasurer any information the State Treasurer requests in order to evaluate the request. In the event that the State Treasurer determines that financing efficiencies will be realized through the combining of financing contracts, then the State Treasurer is authorized to execute and deliver, for and on behalf of the State of North Carolina, subject to the terms and conditions set forth in this Article, a financing contract for the purpose of financing the cost of the multiple energy conservation measures.

(b) A financing contract may be entered into pursuant to this Article only after all of the following conditions are met:

(1) The Office of State Budget and Management has certified that resources are expected to be available to the State to pay the payments to fall due under the financing contract as they become due and payable.

(2) The Council of State has approved the execution and delivery of the financing contract by resolution that sets forth all of the following:

a. The not-to-exceed term or final maturity of the financing contract, which shall be no later than 20 years from the date of acceptance of the project.
b. The not-to-exceed interest rate or rates (or the equivalent thereof), which may be fixed or vary over a period of time, with respect to the financing contract.
c. The appropriate officers of the State to execute and deliver the financing contract and all other documentation relating to it.

(3) The State Treasurer has approved the financing contract and all other documentation related to it, including any deed of trust, security agreement, trust agreement or any credit facility.

The resolution of the Council of State shall include any other matters the Council of State considers appropriate.

(c) In determining whether to approve a financing contract under subdivision (b)(3) of this section, the State Treasurer may consider the factors the State Treasurer considers relevant in order to find and determine all of the following:

(1) The principal amount to be advanced to the State under the financing contract is adequate and not excessive for the purpose of paying the cost of the energy conservation measure.
(2) The increase, if any, in State revenues necessary to pay the sums to become due under the financing contract are not excessive.
(3) The financing contract can be entered into on terms desirable to the State.
(4) In the case of delivery of certificates of participation, the sale of certificates of participation will not have an adverse effect upon any scheduled or proposed sale of obligations of the State or any State agency.

(d) The Office of State Budget and Management is authorized to certify that funds are expected to be available to the State to make the payments due under a financing contract entered into under the provisions of this section as the payments become due and payable. In so certifying, the Office of State Budget and Management may take into account expected decreases in appropriations to the State governmental unit that will offset payments expected to be made under the financing contract. (2002-161, s. 9; 2006-190, s. 7.)

Effect of Amendments. — Session Laws 2006-190, s. 7, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date, substituted "20 years from the date of acceptance of the project" for "12 years from the date the financing contract is entered" in subdivision (b)(2)a.

Article 9.

State Capital Facilities Finance Act.

§ 142-80. Short title.

Editor's Note. —

Session Laws 2006-231, s. 4, effective August 10, 2006, provides: "In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the capital facility costs of a new parking deck to be constructed in downtown Raleigh. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this section."

§ 142-83. Authorization of special indebtedness; General Assembly approval.

Editor's Note. —

Session Laws 2004-179, ss. 1, 1.1 and 1.2, as amended by Session Laws 2005-276, s. 30.3A, and as amended by Session Laws 2006-146, s. 2.1, and as amended by Session Laws 2006-231, s. 1, provide: "This part may be cited as the State Capital Facilities Act of 2004.

"In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the following maximum aggregate principal amounts to finance the costs of the following projects. The table below provides the maximum principal amounts. The first column is the aggregate maximum principal amount. The second column is the maximum portion of this amount that can be issued or incurred before July 1, 2005. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of these projects.

Aggregate Maximum	**Maximum before 7/1/05**	**Project**
$180,000,000	$110,000,000	Acquiring, constructing, and equipping a new cancer rehabilitation and treatment center, a nearby physicians' office building, and a walkway between the two, all to be located at the University of North Carolina Hospitals at Chapel Hill.
60,000,000	30,000,000	Acquiring, constructing, and equipping the North Carolina Cardiovascular Diseases Institute at East Carolina University.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Bioinformatics Center at the University of North Carolina at Charlotte.
28,000,000	25,000,000	Acquiring, constructing, and equipping a stand-alone facility to house the new Pharmacy School program to be located at Elizabeth City State University, and interim temporary facilities to house the program during construction of the facility.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Center for Health Promotion and Partnerships at the University of North Carolina at Asheville.
10,000,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction for the Southeastern North Carolina Nursing Education and Research Center at Fayetteville State University.
10,000,000	10,000,000	Site preparation, engineering, architectural, and other consulting services, and the construction of a research building on the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.
10,000,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a Nursing and Allied Health Building at the University of North Carolina at Pembroke.
10,000,000	10,000,000	To Western Carolina University for land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a building for Western Carolina University and the Mountain Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.

10,000,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a Center for Design Innovation in the Piedmont Triad Research Park to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts.
TOTAL:		
$388,000,000	$265,000,000	

"In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty-two million dollars ($42,000,000) to finance the costs of constructing up to five youth development centers totaling up to 224 beds to be operated by the Department of Juvenile Justice and Delinquency Prevention and to be located as determined by that Department. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of constructing the projects described by this section. Of the special indebtedness authorized by this section, no more than thirteen million dollars ($13,000,000) may be issued or incurred before July 1, 2005."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 23.12(a)-(h), authorizes the issuance or incurrence of special indebtedness to finance the capital facility costs of various construction projects.

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-231, s. 2, provides: "In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the costs of purchasing land to be administered by the Wildlife Resources Commission as State game lands. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of purchasing the land described in this section."

Session Laws 2006-231, s. 4, provides: "In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the capital facility costs of a new parking deck to be constructed in downtown Raleigh. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this section."

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act

[See note for repeal of this Article.]

Sec.
143-3.3. (Repealed effective July 1, 2007) Assignments of claims against State.
143-11. (Repealed effective July 1, 2007) Survey of departments and recommended budget report.
143-15.3B. (Effective until July 1, 2007) The Clean Water Management Trust Fund.
143-16. (Repealed effective July 1, 2007) Article governs all departmental, agency, etc., appropriations.
143-16.1. (Repealed effective July 1, 2007) Federal funds.
143-16.2. (Repealed effective July 1, 2007) Reports.
143-16.3. (Repealed effective July 1, 2007) No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.
143-16.4. (Repealed effective July 1, 2007) Settlement Reserve Fund.
143-16.6. (Repealed effective July 1, 2007) Assignment to the State of rights to tobacco manufacturer escrow funds.
143-16.7. (Repealed effective July 1, 2007) No fee increases that the General Assembly has rejected.
143-31.1. (Repealed effective July 1, 2007) Use of existing plans for State construction projects; study and review of plans and specifications for building, improvement, etc., projects.

Article 3.

Purchases and Contracts.

143-49. (Effective July 1, 2007) Powers and duties of Secretary.
143-52. (Effective July 1, 2007) Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.
143-53. Rules.
143-55. Requisitioning for supplies by agencies; must purchase through sources certified.
143-60. (Effective July 1, 2007) Rules covering certain purposes.
143-63. (Effective July 1, 2007) Financial interest of officers in sources of supply; acceptance of bribes.

Article 3A.

Surplus Property.

Part 1. State Surplus Property Agency.

Sec.
143-64.05. Service charge; receipts.

Article 3B.

Conservation of Energy, Water, and Other Utilities in Government Facilities.

Part 1. Energy Policy and Life-Cycle Cost Analysis.

143-64.10. Findings; policy.
143-64.11. Definitions.
143-64.12. Authority and duties of State agencies.
143-64.15. Life-cycle cost analysis.

Part 2. Guaranteed Energy Savings Contracts for Governmental Units.

143-64.17. Definitions.
143-64.17B. Guaranteed energy savings contracts.
143-64.17G. Report on guaranteed energy savings contracts entered into by local governmental units.
143-64.17H. Report on guaranteed energy savings contracts entered into be State governmental units.

Article 3C.

Contracts to Obtain Consultant Services.

143-64.24. Applicability of Article.

Article 3D.

Procurement of Architectural, Engineering, and Surveying Services.

143-64.31. Declaration of public policy.

Article 8.

Public Contracts.

143-129. Procedure for letting of public contracts.

Article 8B.

State Building Commission.

143-135.27. (Effective until July 1, 2007) Definition of capital improvement project.

Article 9.

Building Code Council and Building Code.

Sec.
143-138. North Carolina State Building Code.
143-143.21A. Purchase agreements; buyer cancellations.

Article 9C.

North Carolina Code Officials Qualification Board.

143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies.

Article 12C.

Retirement Benefits for State Law-Enforcement Officers.

143-166.30. Retirement benefits for State law-enforcement officers.

Article 12E.

Retirement Benefits for Local Governmental Law-Enforcement Officers.

143-166.50. Retirement benefits for local governmental law-enforcement officers.

Article 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

143-214.4. Certain cleaning agents containing phosphorus prohibited.
143-214.7. Stormwater runoff rules and programs.
143-215.1. Control of sources of water pollution; permits required.
143-215.3D. Fee schedule for water quality permits.
143-215.6A. Enforcement procedures: civil penalties.

Part 4. Federal Water Resources Development Projects.

143-215.40. Resolutions and ordinances assuring local cooperation.

Part 8. Grants for Water Resources Development Projects.

143-215.73. (Effective July 1, 2007) Recommendation and disbursal of grants.

Part 8A. Water Resources Development Projects.

143-215.73A. Water Resources Development Plan.

Part 11. Community Conservation Assistance Program.

Sec.
143-215.74M. Community Conservation Assistance Program.

Article 21B.

Air Pollution Control.

143-215.107C. State agency goals, plans, duties, and reports.

Article 24.

Wildlife Resources Commission.

143-250. (Effective July 1, 2007) Wildlife Resources Fund.
143-254.5. Disclosure of personal identifying information.

Article 31A.

Defense of State Employees, Medical Contractors and Local Sanitarians.

143-300.8. Defense of local sanitarians.

Article 33C.

Meetings of Public Bodies.

143-318.14A. Legislative commissions, committees, and standing subcommittees.
143-318.15. (Repealed effective July 1, 2007) Advisory Budget Commission and appropriation committees of General Assembly; application of Article.
143-318.18. Exceptions.

Article 36.

Department of Administration.

Part 1. General Provisions.

143-341. Powers and duties of Department.
143-344. Transfer of functions, property, records, etc.

Article 64.

Smoking in Public Places.

143-597. Nonsmoking areas in State-controlled buildings.
143-599. Exemptions.

Article 68.

Regulation of Boxing.

143-651. Definitions.
143-655. Fees; State Boxing Revenue Account.

Article 75.

Tobacco Trust Fund.

Sec.
143-717. Commission.

ARTICLE 1.

Executive Budget Act.

(See Editor's note at G.S. 143-1 for repeal of this Article)

§ 143-1. (Repealed effective July 1, 2007) Scope and definitions.

Section Repealed Effective July 1, 2007. — Session Laws 2006-203, s. 1, repealed this Article effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before July 1, 2007 are not abated or affected by the act, and the statutes that would be applicable but for the act remain applicable to those prosecutions.

§ 143-2. (Repealed effective July 1, 2007) Purposes.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-3. (Repealed effective July 1, 2007) Examination of officers and agencies; disbursements.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-3.1. (Repealed effective July 1, 2007) Transfers of functions.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-3.2. (Repealed effective July 1, 2007) Issuance of warrants upon State Treasurer; delivery of warrants and disbursements for non-State entities.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-3.3. (Repealed effective July 1, 2007) Assignments of claims against State.

(a) Definitions. — The following definitions apply in this section:

(1) Assignment. An assignment or transfer of a claim, or a power of attorney, an order, or another authority for receiving payment of a claim.
(2) Claim. A claim, a part or a share of a claim, or an interest in a claim, whether absolute or conditional.
(3) Qualified charitable organization. A charitable organization that is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.
(4) State employee credit union. A credit union organized under Chapter 54 of the General Statutes whose membership is at least one-half employees of the State.
(5) The State. The State of North Carolina and any department, bureau, or institution of the State of North Carolina.

(b) Assignments Prohibited. — Except as otherwise provided in this section, any assignment of a claim against the State is void, regardless of the consideration given for the assignment, unless the claim has been duly audited and allowed by the State and the State has issued a warrant for payment of the claim. Except as otherwise provided in this section, the State shall not issue a warrant to an assignee of a claim against the State.

(c) Assignments in Favor of Certain Entities Allowed. — This section does not apply to an assignment in favor of:
(1) A hospital.
(2) A building and loan association.
(3) A uniform rental firm in order to allow an employee of the Department of Transportation to rent uniforms that include day-glo orange shirts or vests as required by federal and State law.
(4) An insurance company for medical, hospital, disability, or life insurance.

(d) Assignments to Meet Child Support Obligations Allowed. — This section does not apply to assignments made to meet child support obligations pursuant to G.S. 110-136.1.

(e) Assignments for Prepaid Legal Services Allowed. — This section does not apply to an assignment for payment for prepaid legal services.

(f) Payroll Deduction for State Employee Credit Union Accounts Allowed. — An employee of the State who is a member of a State employee credit union may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit to any credit union accounts, purchase of any credit union shares, or payment of any credit union obligations agreed to by the employee and the State employee credit union.

(f1) Payroll Deduction for Contributions to the Parental Savings Fund Allowed. — An employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit in the Parental Savings Trust Fund administered by the State Education Assistance Authority.

(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. — An employee of the State or any of its political subdivisions, institutions, departments, bureaus, agencies or commissions, or any of its local boards of education or community colleges, who is a member of a domiciled employees' association that has at least 2,000 members, 500 of whom are employees of the State, a political subdivision of the State, or public school employees, may authorize, in writing, the periodic deduction each payroll period from the employee's salary or wages a designated lump sum to be paid to the employees' association. A political subdivision may also allow periodic deductions for a domiciled employees' association that does not otherwise meet the minimum membership requirements set forth in this paragraph.

An employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.

An authorization under this subsection shall remain in effect until revoked by the employee. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, except for local boards of education.

(h) Payroll Deduction for State Employees Combined Campaign Allowed. — Subject to rules adopted by the State Controller, an employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum to be paid to satisfy the employee's pledge to the State Employees Combined Campaign.

(i) Payroll Deduction for Public School and Community College Employees' Contributions to Charitable Organizations Allowed. — Subject to rules adopted by the State Controller, an employee of a local board of education or community college may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the board of education or community college of a designated lump sum to be contributed to a qualified charitable organization that has first been approved by the employee's board of education or community college board.

(j) Payroll Deduction for University of North Carolina System Employees' Contributions to Certain Charitable Organizations Allowed. — Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution of a designated lump sum to be contributed to a qualified charitable organization that exists to support athletic or charitable programs of the constituent institution and that has first been approved by the President of The University of North Carolina as existing to support athletic or charitable programs. If a payroll deduction plan under this subsection results in additional costs to a constituent institution, these costs shall be paid by the qualified charitable organizations receiving contributions under the plan.

(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. — Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities.

(*l*) Assignment of Payments From the Underground Storage Tank Cleanup Funds. — This section does not apply to an assignment of any claim for payment or reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94B or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94D. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128; 1965, c. 1179; 1969, c. 625; 1977, c. 88; 1981, c. 869; 1981 (Reg. Sess., 1982), c. 1282, ss. 14, 15; 1983, c. 680; c. 913, s. 49; 1983 (Reg. Sess., 1984), c.

1034, s. 147; c. 1036, s. 1; 1985 (Reg. Sess., 1986), c. 1024, s. 5; 1987, c. 738, s. 223; 1989, c. 215; 1989 (Reg. Sess., 1990), c. 1066, s. 82; 1991, c. 688, s. 1; 1993, c. 561, s. 63(a); 1997-412, s. 9; 1998-161, s. 7; 2002-126, s. 6.4(a); 2003-224, s. 1; 2005-276, s. 6.35; 2006-264, s. 67(a).)

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Effect of Amendments. — Session Laws 2006-264, s. 67(a), effective August 27, 2006, added the last sentence in the first paragraph of subsection (g).

§ 143-3.4. (Repealed effective July 1, 2007) Warrants for money paid into treasury by mistake.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-3.5. (Repealed effective July 1, 2007) Coordination of statistics; fiscal analysis required for any bill proposed by a State agency that affects the budget.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-4. (Repealed effective July 1, 2007) Advisory Budget Commission.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-4.1. (Repealed effective July 1, 2007) Biennial inspection.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-5. (Repealed effective July 1, 2007) Appropriation rules.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-6. (Repealed effective July 1, 2007) Information from departments and agencies asking State aid.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-6.2. (Repealed effective July 1, 2007) Use of State funds by non-State entities.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2005-276, s. 13.12(a)-(f), as amended by Session Laws 2006-66, s. 12.3(b), provides: "(a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of twenty million dollars ($20,000,000) for the 2005-2006 fiscal year and the sum of nineteen million five hundred thousand dollars ($19,500,000) for the 2006-2007 fiscal year shall be allocated as follows:

"(1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fifteen million dollars ($15,000,000) of the funds appropriated in this act for each year of the biennium must be used to provide grants under this Program.

"(2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

"(3) To provide economic development research and demonstration grants.

"(b) The funds appropriated in this act to the Rural Economic Development Center, Inc., shall be recurring funds.

"(c) The Rural Economic Development Center, Inc., may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the North Carolina Infrastructure Program, including design of Program guidelines and evaluation of Program results.

"(d) During each year of the 2005-2007 biennium, the Rural Economic Development Center, Inc., may use up to two percent (2%) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

"(e) No later than January 15 each year, the Rural Economic Development Center, Inc., shall submit an annual report to the Joint Legislative Commission on Governmental Operations concerning the progress of the North Carolina Economic Infrastructure Program.

"(f) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., and allocated in subsection (a) of this section, the sum of five hundred thousand dollars ($500,000) for the 2005-2006 fiscal year shall be allocated to the e-NC Authority.

"The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

"The e-NC Authority shall report to the 2006 General Assembly on the following:

"(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access the high-speed Internet.

"(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

"(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

"The e-NC Authority shall, by January 31, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143-7. (Repealed effective July 1, 2007) Itemized statements and forms.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-8. (Repealed effective July 1, 2007) Reporting of legislative and judicial expenditures and financial needs.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-9. (Repealed effective July 1, 2007) Information to be furnished upon request.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-10. (Repealed effective July 1, 2007) Preparation of budget and public hearing.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-10.1A. (Repealed effective July 1, 2007) Budget required to include State cost of local programs — Continuation and expansion costs.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-10.2. (Repealed effective July 1, 2007) Limit on number of State employees.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-10.7. (Repealed effective July 1, 2007) Review of department forms and reports.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-11. (Repealed effective July 1, 2007) Survey of departments and recommended budget report.

(a) On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each line item of the proposed expenditures, the budget shall show in separate parallel columns:

(1) Proposed expenditures and receipts for each fiscal year of the biennium;
(2) The certified budget for the preceding fiscal year;
(3) The currently authorized budget for the preceding fiscal year;
(4) Actual expenditures and receipts for the most recent fiscal year for which actual expenditure information is available; and
(5) Proposed increases and decreases.

Revenue and expenditure information shall be no less specific than the two-digit level in the State Accounting System Chart of Accounts as prescribed by the State Controller. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital improvements. The budget report shall include accurate projections of receipts, expenditures, and fund balances for all budget codes, funds, and accounts. Estimated receipts, including tuition collected by university or community college institutions, shall be adjusted to reflect actual collections from the previous fiscal year, unless the Director either (i) recommends a change that will result in collections in the budget year that differ from the actual collections of the prior year or (ii) otherwise determines there is a more reasonable basis upon which to accurately project receipts.

(a1) In developing the budget, the Director shall consider the information on student enrollment increases submitted to the Director by the State Board of Education, the State Board of Community Colleges, and the Board of Governors of The University of North Carolina. The Director shall include in the continuation budget the amount the Director proposes to fund for the enrollment increases for public schools, community colleges, and the university system.

(b) The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.
(2) State Controller reports including:
    a. An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.

b. A statement of special funds.

(2a) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two fiscal years.

(3) A report on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year, the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.

(4) A statement showing the State Board of Education's request, in accordance with G.S. 115C-96, for sufficient funds to provide textbooks to public school students.

(5) A proposal for expenditure of the funds in the Repairs and Renovations Reserve Account, which is established in G.S. 143-15.3A. The Director shall consider the data from the Facilities Condition and Assessment Program in the Office of State Construction when establishing priorities for the proposed expenditure of these funds.

(6) Statements of the objections of members of the Council of State received pursuant to G.S. 143-10.3(b) to the performance measures, departmental operations plans, and indicators of program impact prepared in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5.

(7) A list of the budget requests of members of the Council of State that are not included in the proposed budget.

(8) An estimate of the equipment replacement costs within the Judicial Department for the period covered by that budget.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget. (1925, c. 89, s. 12; 1929, c. 100, s. 11; 1983, c. 717, s. 54; 1985 (Reg. Sess., 1986), c. 955, s. 62; c. 1024, ss. 11-13; 1989, c. 752, s. 49; 1991, c. 542, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 81(b); 1993, c. 321, s. 17.1(d); 1993 (Reg. Sess., 1994), c. 769, s. 11.1(d); 1995, c. 324, s. 10(a); 2000-67, s. 15.7; 2005-276, s. 6.4; 2006-66, s. 6.10.)

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 6.10, effective July 1, 2006, added subsection (a1).

§ 143-12. (Repealed effective July 1, 2007) Bills containing proposed appropriations.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-12.1. (Repealed effective July 1, 2007) Vending facilities.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-13. (Repealed effective July 1, 2007) Printing copies of budget report and bills and rules for the introduction of the same.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-14. (Repealed effective July 1, 2007) Joint meetings of committees considering the budget report and appropriation bill.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-15. (Repealed effective July 1, 2007) Reduction and increase of items by General Assembly.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-15.1. (Repealed effective July 1, 2007) Current Operations Appropriations Act; General Fund Financial Model.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-15.2. (Repealed effective July 1, 2007) Use of General Fund credit balance; priority uses.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 2.2(b), provides: "Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer two hundred twenty-two million two hundred twenty-nine thousand one hundred eighty-nine dollars ($222,229,189) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2006. This subsection becomes effective June 30, 2006."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143-15.3. (Repealed effective July 1, 2007) Use of General Fund credit balance; priority uses.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-15.3A. (Repealed effective July 1, 2007) Repairs and Renovations Reserve Account.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, ss. 2.2(b), (c), provides: "(b) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer two hundred twenty-two million two hundred twenty-nine thousand one hundred eighty-nine dollars ($222,229,189) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2006. This subsection becomes effective June 30, 2006.

"(c) Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2006-2007 fiscal year to be used in accordance with G.S. 143-15.3A."

Session Laws 2006-66, ss. 23.3(a)-(c), provides: "(a) Of the funds in the Reserve for Repairs and Renovations for the 2006-2007 fiscal year, forty-six percent (46%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143-15.3A.

"Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

"The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

"(b) Of the funds allocated to the Office of State Budget and Management in subsection (a) of this section:

"(1) Up to eleven million eight hundred thousand dollars ($11,800,000) for the 2006-2007 fiscal year shall be used for eligible repair and renovation projects in preparation for the construction of the Regional Medical Center and Mental Health Center in the Department of Correction.

"(2) Up to two million eight hundred thousand dollars ($2,800,000) shall be used for repairs and renovations of facilities located on the grounds of the Palmer Memorial Institute State Historic Site.

"(c) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, funds shall be used for projects at constituent institutions as follows:

"(1) Up to one million nine hundred thousand dollars ($1,900,000) for the 2006-2007 fiscal year shall be used for parking and road repairs and improvements at Elizabeth City State University.

"(2) Up to six million four hundred thousand dollars ($6,400,000) for the 2006-2007 fiscal year shall be used for replacement and repair of steam lines and steam tunnels at North Carolina Central University.

"(3) Up to four hundred sixteen thousand dollars ($416,000) for the 2006-2007 fiscal year shall be used for planning for eligible repair and renovation projects at Rhodes Hall at the University of North Carolina at Asheville.

"The amount of funding a constituent institution is allocated under this subsection shall offset the amount the constituent institution receives under subsection (a) of this section."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143-15.3B. (Recodified effective July 1, 2007) The Clean Water Management Trust Fund.

Editor's Note. — Session Laws 2006-203, s. 5(a), effective July 1, 2007, recodified this section as G.S. 113A-253.1. For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

For postponed repeal of this section, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-15.3B. (Effective until July 1, 2007) The Clean Water Management Trust Fund.

(a) The Clean Water Management Trust Fund is established in G.S. 113A-253. The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted, it is imperative that the State provide a minimum of one hundred million dollars ($100,000,000) each calendar year to the Clean Water Management Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of one hundred million dollars ($100,000,000).

(b) The funds in the Clean Water Management Trust Fund shall be used only in accordance with Article 18 of Chapter 113A of the General Statutes. (1996, 2nd Ex. Sess., c. 18, s. 27.6(b); 1997-443, s. 7.9(a); 2000-67, ss. 7.7(b)-(d); 2001-474, s. 26.)

Effect of Amendments. — Session Laws 2006-203, s. 5(a), (b), effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, recodified this section as G.S. 113A-253.1.

§ 143-15.3C. (Repealed effective July 1, 2007) Work First Reserve Fund.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-15.3D. (Repealed effective July 1, 2007) Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.33H(a), effective July 1, 2007, had amended subsection (c) by deleting "used for the payment of debt service on financing contract indebtedness authorized pursuant to Article 9 of Chapter 142 of the General Statutes for the construction of a new State psychiatric hospital. Any remainder not needed for this debt service shall be" preceding "credited to the Department of Health and Human services to be used only for the purposes." However, because Session Laws 2006-203, s. 1, repealed this section effective July 1, 2007, the amendment by 2006-66, s. 10.33H(a) has not been given effect.

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-248, s. 1, provides: "This act shall be known as 'The Studies Act of 2006'."

Dorothea Dix Hospital Property Study Commission. — Session Laws 2003-314, ss. 3.4(a), (a1), (b) and (d), as amended by Session Laws 2004-124, s. 10.26A(a) and (b), and as amended by Session Laws 2005-7, s. 1, and as amended by Session Laws 2006-248, s. 52, provides: "(a) Dorothea Dix Hospital Property Study Commission. — If any of the State-owned real property encompassing the Dorothea Dix Hospital campus is no longer needed by Dorothea Dix Hospital and is not transferred to another State agency or agencies before the sale of any or all of the property to a nongovernmental entity, options for this sale shall be considered by the Dorothea Dix Hospital Property Study Commission. The Commission shall make recommendations on the options for sale of the property to the Joint Legislative Commission on Governmental Operations, the 2005 General Assembly, and the Appropriations Committees of the Senate and the House of Representatives before any sale of any or all parts of the property. The Commission shall terminate upon submission of its final report.

"(a1) The State Property Office, in consultation with the City of Raleigh, shall develop a Master Plan for the Dorothea Dix Campus. The State Property Office shall hire a consultant to assist with the development of the Master Plan. The State Property Office shall examine, among other things, operations for land conservation, mixed-use development, and anticipated State office space needs. The Master Plan shall reflect both State needs and local considerations. The State Property Office shall submit the Master Plan to the Dorothea Dix Property Study Commission no later than September 1, 2005. The Commission shall review the Master Plan and shall make recommendations to the 2006 Session of the 2005 General Assembly.

"In order to enhance communication and feedback regarding the planning process, an oversight committee shall be established to oversee the development of the Master Plan. The oversight committee shall consist of five members: three shall be appointed by the Cochairs of the Dorothea Dix Property Study Commission; one shall be appointed by the Raleigh City Council; and one shall be appointed by the Wake County Board of Commissioners. The oversight committee shall terminate upon the submission of the Master Plan to the Dorothea Dix Property Study Commission.

"(b) Creation and Membership. — The Dorothea Dix Hospital Property Study Commission is created. The Commission shall consist of 11 members, five appointed by the President Pro Tempore of the Senate and five appointed by the Speaker of the House of Representatives. The Secretary of Health and Human Services shall serve as an ex officio member of the Commission.

"(d) Severability. — If any provision of this act or its application to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

State Facilities Master Plan/DIX Complementary Uses. — Session Laws 2006-248, s. 21, provides: "The Dorothea Dix Hospital Property Study Commission shall study and make recommendations regarding the following:

"(1) Balancing complementary public uses of open space, the adaptive re-use of existing facilities, and continued support for mental health services.

"(2) The financial feasibility of the various uses.

"(3) An assessment of financial mechanisms for the implementation and maintenance of the various uses.

"(4) Administrative or governance structures to implement the uses.

"The Commission shall report its findings and recommendations to the 2007 General Assembly by January 31, 2007."

§ 143-15.3E. (Repealed effective July 1, 2007) JDIG Reserve Fund.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-15.4. (Repealed effective July 1, 2007) General Fund operating budget size limited.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-16. (Repealed effective July 1, 2007) Article governs all departmental, agency, etc., appropriations.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-16.1. (Repealed effective July 1, 2007) Federal funds.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-16.2. (Repealed effective July 1, 2007) Reports.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-16.3. (Repealed effective July 1, 2007) No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.

Notwithstanding any other provision of law, no funds from any source, except for gifts, public or private grants, funds allocated from the Repair and Renovations Account in accordance with G.S. 143-15.3A, and funds allocated from the Contingency and Emergency Fund in accordance with G.S. 143-12(b), may be expended for any new or expanded purpose, position, or other expenditure for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period; provided, however, that in the event the Director of the Budget declares that it is necessary to deviate from this provision, he may do so after prior consultation with the Joint Legislative Commission on Governmental Operations. For the purpose of this section, the General Assembly has considered a purpose, position, or other expenditure when that purpose is included in a bill, amendment, or petition and when any committee of the Senate or the House of Representatives deliberates on that purpose. (1985 (Reg. Sess., 1986), c. 1014, s. 177; 1987 (Reg. Sess., 1988), c. 1086, s. 50; 1989, c. 752, s. 47; 1991 (Reg. Sess., 1992), c. 812, s. 6(b); 1996, 2nd Ex. Sess., c. 18, s. 7.4(j); 1997-443, s. 7.8(a); 2006-66, s. 6.17(a); 2006-221, s. 2.)

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 6.17(a), as added by Session Laws 2006-221, s. 2, effective July 1, 2006, added "public or private" preceding "grants" in the first sentence.

§ 143-16.4. (Repealed effective July 1, 2007) Settlement Reserve Fund.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-16.6. (Repealed effective July 1, 2007) Assignment to the State of rights to tobacco manufacturer escrow funds.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-16.7. (Repealed effective July 1, 2007) No fee increases that the General Assembly has rejected.

Notwithstanding any other provision of law, no fee shall be increased if the General Assembly has rejected an increase of that fee for the current fiscal period. For the purpose of this section, the General Assembly has rejected a fee increase when that fee increase is included in a bill which fails a reading, or if the fee increase is included in the version of a bill that passes one house, but the bill is enacted without the fee increase. (2006-66, s. 6.4.)

Editor's Note. — Session Laws 2006-66, s. 28.7, made this section effective July 1, 2006.

For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143-18. (Repealed effective July 1, 2007) Unencumbered balances to revert to treasury; capital appropriations excepted.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, s. 19.4(a), provides: "Notwithstanding G.S. 143-18, the Department of Revenue may expend up to two million four hundred thirty-four thousand two hundred seventy dollars and seventy-one cents ($2,434,270.71) of unencumbered maintenance appropriations as of June 30, 2006, for the purpose of paying the Civil Penalty and Forfeiture Fund. The amount to be expended represents Unauthorized Substance Tax penalty collections that were paid to local law enforcement agencies for the period of July 1, 2005, through December 31, 2005. The source of the unencumbered funds shall come entirely from the Department of Revenue. If unencumbered funds are not sufficient on June 30, 2006, the Department shall use anticipated unencumbered funds as of July 1, 2006."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143-18.1. Decrease of projects within capital improvement appropriations; requesting authorization of capital projects not specifically provided for.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-19. (Repealed effective July 1, 2007) Help for Director.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-20. (Repealed effective July 1, 2007) Accounting records.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-20.1. (Repealed effective July 1, 2007) Annual financial statements.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-21. (Repealed effective July 1, 2007) Issuance of subpoenas.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-22. (Repealed effective July 1, 2007) Surveys, studies and examinations of departments and institutions.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-23. (Repealed effective July 1, 2007) All maintenance funds for itemized purposes; transfers between objects or line items.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, s. 7.6(c), provides: "The State Board of Education shall review the incentive award structure described in this section to ensure that extraordinary performance is rewarded. In addition, the Board shall determine whether the relationship between awards for teachers and teacher assistants and the Board's strategic priorities is appropriate. The Board shall provide a preliminary report of its findings and recommendations to the Joint Legislative Education Oversight Committee by December 15, 2006."

Session Laws 2006-66, s. 7.17, provides: "Notwithstanding G.S. 143-23, the State Board of Education may use monies from the State Public School Fund in the 2006-2007 fiscal year only to pay for the additional costs associated with an increased number of registration fees for students enrolling in Distance Education courses."

Session Laws 2006-66, s. 8.3(b), provides: "Notwithstanding G.S. 143-23, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management, in consultation with the Office of Information Technology Services, and after consultation with the Joint Legislative Commission on Governmental Operations, use funds appropriated in this act for the College Information System Project to create a maximum of 20 positions or incur expenditures necessary to transfer the maintenance and administration of the College Information System Project from the vendor to the System Office."

Session Laws 2006-66, s. 8.5, provides: "Notwithstanding G.S. 143-23, the Community Colleges System Office may use State literacy funds to fund the State administration of the GED office. Federal funds previously used to support the State administration functions shall be reallocated to the colleges."

Session Laws 2006-66, s. 9.7, provides: "Notwithstanding G.S. 143-23, for the 2006-2007 fiscal year, the General Administration of The University of North Carolina and the State Educational Assistance Authority shall, with the approval of the Office of State Budget and Management, reorganize budget code 16012, UNC Board of Governors Related Educational Programs, so that the budget reflects and segregates each specific program individually. The Office of State Budget and Management shall work with The University of North Carolina General Administration and the State Educational Assistance Authority to ensure that each program represented in code 16012 is identified and budgeted separately."

Session Laws 2006-247, s. 15(k), provides: "This subsection is effective on July 1, 2006. Of the funds appropriated by Senate Bill 1741 as enacted by the 2005 General Assembly, Regular Session 2006, to the Department of Correction for the 2006-2007 fiscal year the sum of one million three hundred seven thousand two hundred eighteen dollars ($1,307,218) shall be used to implement the sex offender monitoring program established pursuant to this section. Notwithstanding G.S. 143-23(a2), the Department of Correction may use available funds to implement this program during the 2006-2007 fiscal year if expenditures are anticipated to exceed the amount appropriated by this act. Prior to exceeding the amount appropriated for this program by this act, the Department of Correction shall report to the Joint Legislative Commission on Governmental Operations."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-142, s. 6(a), effective July 19, 2006, and expiring July 1, 2007, provides: "Notwithstanding G.S. 143-23, an area authority or a county program may transfer from one age or disability category to a different age or disability category up to fifteen percent (15%) of the funds initially allocated to the age or disability category from which funds are being transferred. Prior to the transfer, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall verify that the transfer meets applicable federal requirements. Area authorities and county programs shall:

"(1) Publicly document that they have addressed the service needs of the category from which the funds are being transferred before any transfer may occur; and

"(2) Submit the required documentation to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Fiscal Research Division within 15 days of making the transfer."

Inmate Costs. — Session Laws 2005-276, s. 17.6(a) through (c), as amended by Session Laws 2006-66, s. 16.1, provides: "(a) If the cost of providing food and health care to inmates housed in the Division of Prisons is anticipated to exceed the continuation budget amounts provided for that purpose in this act, the Department of Correction shall report the reasons for the anticipated cost increase and the source of funds the Department intends to use to cover those additional needs to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

"(b) Notwithstanding the provisions of G.S. 143-23(a2), the department of Correction may use funds available during the 2005-2007 biennium for the purchase of prescription drugs for inmates if expenditures are projected to exceed the Department's inmate medical continuation budget for prescription drugs. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

"(c) Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2007 biennium for the purchase of laundry services for inmates if expenditures are projected to exceed the Department's budget for clothing and laundry services. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount."

Session Laws 2005-276, s. 17.10, as amended by Session Laws 2006-66, s. 16.3, provides: "Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2007 biennium for expenses for computer/data processing services if expenditures exceed the Department's continuation budget amount for those services. The Department shall report to the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount."

NC Wise Positions. — Session Laws 2006-66, s. 7.12(a), (b), provides: "Notwithstanding G.S. 143-23, the State Board of Education may, in consultation with the Office of Information Technology Services, use funds appropriated in this act for NC WISE to create a maximum of 20 positions and incur expenditures necessary to transfer the maintenance and administration of the NC WISE system from the vendor to the Department of Public Instruction.

"The Department of Public Instruction shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the NC WISE project."

§ 143-23.2. (Repealed effective July 1, 2007) Transfers to Department of Health and Human Services.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, ss. 10.7(a) and (b), provides that: "(a) Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, the sum of fifty three million dollars ($53,000,000) for the 2006-2007 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143-23.2(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act. The Department may use funds in the Medicaid Trust Fund and not appropriated by law for other purposes to fund the settlement of the Disproportionate Share Hospital payment audit issues between the Department of Health and Human Services and the federal government related to fiscal years 1997-2002.

"(b) Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, the sum of five million four thousand five hundred four dollars ($5,004,504) for the 2006-2007 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for the implementation of the Medicaid Management Information System (MMIS)."

§ 143-23.3. (Repealed effective July 1, 2007) Transfer of certain funds authorized.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-24. (Repealed effective July 1, 2007) Borrowing of money by State Treasurer.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-25. (Repealed effective July 1, 2007) Maintenance appropriations dependent upon adequacy of revenues to support them.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-26. (Repealed effective July 1, 2007) Director to have discretion as to manner of paying annual appropriations.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-27. (Repealed effective July 1, 2007) Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-27.2. (Recodified effective July 1, 2007) Discontinued service retirement allowance and severance wages for certain State employees.

Editor's Note. — Session Laws 2006-203, s. 6, effective July 1, 2007, recodified this section as G.S. 126-8.5. For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-28. (Repealed effective July 1, 2007) All State agencies under provisions of this Article.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-28.1. (Repealed effective July 1, 2007) Highway Fund appropriation.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-29. (Repealed effective July 1, 2007) Delegation of power by Director.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-30. (Repealed effective July 1, 2007) Budget of State institutions.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-31. (Repealed effective July 1, 2007) Building and permanent improvement funds spent in accordance with budget.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-31.1. (Repealed effective July 1, 2007) Use of existing plans for State construction projects; study and review of plans and specifications for building, improvement, etc., projects.

(a) All State agencies shall use existing plans and specifications for construction projects, where feasible. Prior to designing a project, State agencies shall consult with the Department of Administration on the availability of appropriate existing plans and specifications and the feasibility of using them for a project.

(b) The Director of the Budget shall determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectural features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications, and until economic conditions of the construction industry are considered by the Office of State Budget and Management to be favorable to the letting of construction contracts. The Director of the Budget may, when he considers it in the best interest of the State to do so, terminate design contracts when it is documented that the designer has failed to perform the conditions enumerated in the contract.

Notwithstanding G.S. 143-135, the Director of the Budget may authorize the Department of Health and Human Services and the Department of Correction to use funds necessary for projects that correct deficiencies, improve living conditions, or renovate unneeded patient space for State office space. (1953, c. 1090; 1963, c. 423; 1975, c. 879, s. 46; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 860, s. 12; 1983 (Reg. Sess., 1984), c. 1116, s. 95; 1997-443, s. 11A.118(a); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-217, s. 1.)

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Effect of Amendments. — Session Laws 2006-217, s. 1, effective September 1, 2006, and applicable to construction projects on which design is begun after that date, added "Use of existing plans for State construction projects;" at the beginning of the section catchline; designated the existing provisions as subsection (b); added subsection (a); and in the first sentence of subsection (b), deleted "It shall be the duty and responsibility of" at the beginning, and substituted "shall determine" for "to determine."

§ 143-31.2. (Recodified effective July 1, 2007) Appropriation, allotment, and expenditure of funds for historic and archeological property.

Editor's Note. — Session Laws 2006-203, s. 7, effective July 1, 2007, recodified this section as G.S. 143B-53.1. For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-31.3. (Repealed effective July 1, 2007) Grants to nonstate health and welfare agencies.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-31.4. (Repealed effective July 1, 2007) Non-State match restrictions.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-31.5. (Repealed effective July 1, 2007) Repayment of certain unexpended and unencumbered sums; reports.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-32. (Repealed effective July 1, 2007) Person expending an appropriation wrongfully.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-33. (Repealed effective July 1, 2007) Intent.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-34.1. (Repealed effective July 1, 2007) Positions included in the State's payroll must be approved by the Director of Budget; payment of benefits and other salary-related items must be made from same source as salary; dependent care assistance program authorized; flexible compensation benefits authorized.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Session Laws 2006-66, s. 6.2, provides that: "Notwithstanding G.S. 143-34.1(a1), a department, institution, or other agency of State government may establish receipt-supported positions authorized in this act upon approval by the Director of the Budget. The Director, if necessary, may establish a receipt-supported position pursuant to this section at an annual salary amount different from the salary amount set out in this act if (i) funds are available from the proposed funding source and (ii) the alternative salary amount remains within the established salary range grade identified for the job classification of the affected receipt-supported position established in this act. The Director shall not change the job classifications or increase the number of receipt-supported positions specified in this act without prior consultation with the Joint Legislative Commission on Governmental Operations."

Session Laws 2006-66, s. 16B.1, as added by S.L. 2006-221, s. 17, provides: "Notwithstanding G.S. 143-34.1(a1), the Department of Justice may use up to one hundred six thousand five hundred seventy dollars ($106,570) in receipts in the 2006-2007 fiscal year to establish one Attorney III position in the Department to provide legal services for the Department of Cultural Resources."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143-34.2. (Repealed effective July 1, 2007) Information as to requests for nonstate funds for projects imposing obligation on State; statement of participation in contracts, etc., for nonstate funds; limiting clause required in certain contracts or grants.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-34.6. (Repealed effective July 1, 2007) Deposit of payroll deductions.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

§ 143-34.7. (Repealed effective July 1, 2007) Participation by Legislative Officers.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-1.

Article 1B.

Capital Improvement Planning Act.

§ 143-34.40. (Repealed effective July 1, 2007) Definitions.

Article Repealed Effective July 1, 2007. — Session Laws 2006-203, s. 2, repealed this Article effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before July 1, 2007 are not abated or affected by the act, and the statutes that would be applicable but for the act remain applicable to those prosecutions.

§ 143-34.41. (Repealed effective July 1, 2007) Legislative intent; purpose.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-34.40.

§ 143-34.42. (Repealed effective July 1, 2007) Capital improvement facilities inventory.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-34.40.

§ 143-34.43. (Repealed effective July 1, 2007) Capital improvement needs criteria.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-34.40.

§ 143-34.44. (Repealed effective July 1, 2007) Agency capital improvement needs estimates.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-34.40.

§ 143-34.45. (Repealed effective July 1, 2007) Six-year capital improvement plan.

Editor's Note. — For postponed repeal of this Article, effective July 1, 2007, see the editor's note at G.S. 143-34.40.

ARTICLE 3.

Purchases and Contracts.

§ 143-49. (Effective July 1, 2007) Powers and duties of Secretary.

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, including sources of supply of materials and supplies with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided.

(2) To establish and enforce specifications which shall apply to all supplies, materials and equipment to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

When the award of any contract for contractual services exceeding a cost of one hundred thousand dollars ($100,000) requires negotiation with prospective contractors, the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in negotiation for the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his

G.S. 143-49 is set out twice. See notes.

representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.

(5) To make provision for or to contract for all State printing, including all printing, binding, paper stock, recycled paper stock, supplies, and supplies with recycled content, or materials in connection with the same.

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are defined as "institutions" in G.S. 116-22(1), and to counties, cities, towns, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract.

(6) **(See Editor's note for effective date)** To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are defined as "institu-

tions" in G.S. 116-22(1), and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract.

(7) To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services.

(8) To establish and maintain a procurement card program for use by State agencies, community colleges, nonexempted constituent institutions of The University of North Carolina, and local school administrative units. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Office of Information Technology Services. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC General Administration, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school administrative units, and the Office of Information Technology Services. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC General Administration, the Community Colleges System Office, the Department of Public Instruction, and the Office of Information Technology Services.

(8) **(See Editor's note for effective date)** To establish and maintain a procurement card program for use by State agencies, community colleges, and nonexempted constituent institutions of The University of North Carolina. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Office of Information Technology Services. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC General Administration, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school administrative units, and the Office of Information Technology Services. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC General Administration, the Community Colleges System Office, the Department of Public Instruction, and the Office of Information Technology Services. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961,

c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733; 1979, c. 759, s. 1; 1983, c. 717, ss. 60, 62; 1985 (Reg. Sess., 1986), c. 955, ss. 79-82; 1989, c. 408; 1991, c. 358, s. 1; 1993, c. 256, s. 1; 1995, c. 265, ss. 1, 5; 1996, 2nd Ex. Sess., c. 18, s. 24.17; 1997-443, s. 11A.118(a); 1999-20, s. 1; 2000-67, s. 10.9(a); 2001-424, s. 15.6(a); 2001-424, s. 15.6(d); 2001-513, s. 28(b); 2003-147, s. 8; 2004-203, s. 72(b); 2005-213, s. 2; 2006-203, s. 82.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 82, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, delete the former last sentence in subdivision (6), which read: "Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission."

§ 143-52. (Effective July 1, 2007) Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation

G.S. 143-52 is set out twice. See notes.

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shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of equipment, materials, and supplies exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, ss. 2, 3; 1983, c. 717, s. 61; 1985 (Reg. Sess., 1986), c. 955, ss. 83-86; 1989 (Reg. Sess., 1990), c. 936, s. 3(a); 1997-412, s. 2; 1999-434, s. 12; 2006-203, s. 83.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 83, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last sentence, which read: "Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

§ 143-53. Rules.

(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review. The Division of Purchase and Contract shall review and decide a protest on a contract valued at twenty-five thousand dollars ($25,000) or more. The Secretary shall adopt rules or criteria governing the review of and decision on a protest on a contract of less than twenty-five thousand dollars ($25,000) by the agency that awarded the contract.

(2) **(See Editor's note)** Prescribing the routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1 or G.S. 116-31.10. The purchasing delegation for securing offers (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, and community college shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of

their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Defining contractual services for the purposes of G.S. 143-49(3) and G.S. 143-49(5).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, installment or lease-purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding, including, but not limited to, negotiation, reverse auctions, and acceptance of electronic bids. Reverse auctions may only be utilized for the purchase or exchange of supplies, equipment, and materials as provided in G.S. 115C-522. Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the purchase, rental, or lease of equipment, materials, supplies, or services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars ($10,000). The Division may levy a fee, not to exceed one dollar ($1.00), for review of each waiver application.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216.

(b) In adopting the rules authorized by subsection (a) of this section, the Secretary shall include special provisions for the purchase of goods and services, which provisions are necessary to meet the documented training, work, or independent living needs of persons with disabilities according to the requirements of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended. The Secretary may consult with other agencies having expertise in meeting the needs of individuals with disabilities in developing these provisions. These special provisions shall establish purchasing procedures that:

(1) Provide for the involvement of the individual in the choice of particular goods, service providers, and in the methods used to provide the goods and services;

(2) Provide the flexibility necessary to meet those varying needs of individuals that are related to their disabilities;

(3) Allow for purchase outside of certified sources of supply and competitive bidding when a single source can provide multiple pieces of equipment, including adaptive equipment, that are more compatible with each other than they would be if they were purchased from multiple vendors;

(4) Permit priority consideration for vendors who have the expertise to provide appropriate and necessary training for the users of the equipment and who will guarantee prompt service, ongoing support, and maintenance of this equipment;

(5) Permit agencies to give priority consideration to suppliers offering the earliest possible delivery date of goods or services especially when a time factor is crucial to the individual's ability to secure a job, meet the probationary training periods of employment, continue to meet job requirements, or avoid residential placement in an institutional setting; and

(6) Allow consideration of the convenience of the provider's location for the individual with the disability.

In developing these purchasing provisions, the Secretary shall also consider the following criteria: (i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question.

(c) **(Effective until July 1, 2007)** The purpose of rules promulgated hereunder shall be to promote sound purchasing management.

Prior to adopting rules under this section, the Secretary of Administration may consult with the Advisory Budget Commission.

(c) **(Effective July 1, 2007)** The purpose of rules promulgated hereunder shall be to promote sound purchasing management.

(d) Notwithstanding the provisions of this section or any rule adopted pursuant to this Article, The University of North Carolina may solicit bids for service contracts with a term of 10 years or less, including extensions and renewals, without the prior approval of the State Purchasing Officer. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 4; 1983, c. 717, ss. 63-64.1; 1985 (Reg. Sess., 1986), c. 955, ss. 87, 88; 1987, c. 827, s. 216; 1989 (Reg. Sess., 1990), c. 936, s. 3(b); 1995, c. 256, s. 1; 1997-412, s. 3; 1998-217, s. 15; 1999-400, ss. 1, 2; 2002-107, s. 2; 2003-147, s. 9; 2004-203, s. 72(b); 2005-125, s. 1; 2006-203, s. 84.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 2007. The second version of subsection (c) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 84, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former second paragraph of subsection (c), which read: "Prior to adopting rules under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

§ 143-55. Requisitioning for supplies by agencies; must purchase through sources certified.

Unless otherwise provided by law, after sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration. (1931, c. 261, s. 6; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 2006-264, s. 59(c).)

Effect of Amendments. — Session Laws 2006-264, s. 59(c), effective August 27, 2006, added "Unless otherwise provided by law" at the beginning of this section.

§ 143-60. (Effective July 1, 2007) Rules covering certain purposes.

The Secretary of Administration may adopt, modify, or abrogate rules covering the following purposes, in addition to those authorized elsewhere in this Article:

(1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.

(2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.

(3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications.

(4) Prescribing the manner in which purchases shall be made in emergencies.

(5) Providing for such other matters as may be necessary to give effect to foregoing rules and provisions of this Article.

(6) Prescribing the manner in which passenger vehicles shall be purchased.

Further, the Secretary of Administration may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3; 1961, c. 772; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 268, s. 2; 1983, c. 717, ss. 67, 68; 1985 (Reg. Sess., 1986), c. 955, ss. 89, 90; 1987, c. 282, s. 27; c. 827, s. 217; 2006-203, s. 85.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 85, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last paragraph, which read: "Prior to taking any action under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

§ 143-63. (Effective July 1, 2007) Financial interest of officers in sources of supply; acceptance of bribes.

Neither the Secretary of Administration, nor any assistant of the Secretary's shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Secretary, assistant, or member of the Commission accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a Class F felony. Upon conviction thereof, any such Secretary or assistant shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 717, s. 81; 1993, c. 539, s. 1311; 1994, Ex. Sess., c. 24, s. 14(c); 2006-203, s. 86.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 86, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "the Secretary's" for "his, nor any member of the Advisory Budget Commission" in the first sentence; and substituted "Secretary or assistant" for "Secretary, assistant or member of the Commission" in the last sentence.

ARTICLE 3A.

Surplus Property.

Part 1. State Surplus Property Agency.

§ 143-64.05. Service charge; receipts.

(a) The State agency for surplus property may assess and collect a service charge for the acquisition, receipt, warehousing, distribution, or transfer of any State surplus property and for the transfer or sale of recyclable material. The service charge authorized by this subsection does not apply to the transfer or sale of timber on land owned by the Wildlife Resources Commission.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The

Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity. (1991, c. 358, s. 2; 1991 (Reg. Sess., 1992), c. 900, s. 24; 1998-223, s. 2; 2006-231, s. 3.)

Effect of Amendments. — Session Laws 2006-231, s. 3, effective August 10, 2006, substituted "Service charge; receipts" for "Definitions" in the section catchline; and added the last sentence in subsection (a).

ARTICLE 3B.

Conservation of Energy, Water, and Other Utilities in Government Facilities.

Editor's Note. — Session Laws 2006-190, s. 1, effective August 3, 2006, rewrote the Article 3B heading, which formerly read "Energy Conservation in Government Facilities."

Part 1. Energy Policy and Life-Cycle Cost Analysis.

§ 143-64.10. Findings; policy.

(a) The General Assembly finds all of the following:

(1) That the State shall take a leadership role in aggressively undertaking the conservation of energy, water, and other utilities in North Carolina.

(2) That State facilities have a significant impact on the State's consumption of energy, water, and other utilities.

(3) That practices to conserve energy, water, and other utilities that are adopted for the design, construction, operation, maintenance, and renovation of these facilities and for the purchase, operation, and maintenance of equipment for these facilities will have a beneficial effect on the State's overall supply of energy, water, and other utilities.

(4) That the cost of the energy, water, and other utilities consumed by these facilities and the equipment for these facilities over the life of the facilities shall be considered, in addition to the initial cost.

(5) That the cost of energy, water, and other utilities is significant and facility designs shall take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the energy, water, and other utilities consumed, and of operation and maintenance of the facility as it affects the consumption of energy, water, or other utilities.

(6) That State government shall undertake a program to reduce the use of energy, water, and other utilities in State facilities and equipment in those facilities in order to provide its citizens with an example of energy-use, water-use, and utility-use efficiency.

(b) It is the policy of the State of North Carolina to ensure that practices to conserve energy, water, and other utilities are employed in the design, construction, operation, maintenance, and renovation of State facilities and in the purchase, operation, and maintenance of equipment for State facilities. (1975, c. 434, s. 1; 1993, c. 334, s. 2; 2001-415, s. 1; 2006-190, s. 8.)

Effect of Amendments. — Session Laws 2006-190, s. 8, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date, rewrote the section.

§ 143-64.11. Definitions.

For purposes of this Article:

(1) "Economic life" means the projected or anticipated useful life of a facility.

(2) "Energy-consumption analysis" means the evaluation of all energy-consuming systems, including systems that consume water or other utilities, and components of these systems by demand and type of energy or other utility use, including the internal energy load imposed on a facility by its occupants, equipment and components, and the external energy load imposed on the facility by climatic conditions.

(2a) "Energy Office" means the State Energy Office of the Department of Administration.

(2b) "Energy-consuming system" includes but is not limited to any of the following equipment or measures:

- a. Equipment used to heat, cool, or ventilate the facility;
- b. Equipment used to heat water in the facility;
- c. Lighting systems;
- d. On-site equipment used to generate electricity for the facility;
- e. On-site equipment that uses the sun, wind, oil, natural gas, liquid propane gas, coal, or electricity as a power source; and
- f. Energy conservation measures, as defined in G.S. 143-64.17, in the facility design and construction that decrease the energy, water, or other utility requirements of the facility.

(3) "Facility" means a building or a group of buildings served by a central distribution system for energy, water, or other utility or components of a central distribution system.

(4) "Initial cost" means the required cost necessary to construct or renovate a facility.

(5) "Life-cycle cost analysis" means an analytical technique that considers certain costs of owning, using, and operating a facility over its economic life, including but not limited to:

- a. Initial costs;
- b. System repair and replacement costs;
- c. Maintenance costs;
- d. Operating costs, including energy costs; and
- e. Salvage value.

(6) Repealed by Session Laws 1993, c. 334, s. 3, effective July 13, 1993.

(7) "State agency" means the State of North Carolina or any board, bureau, commission, department, institution, or agency of the State.

(8) "State-assisted facility" means a facility constructed or renovated in whole or in part with State funds or with funds guaranteed or insured by a State agency.

(9) "State facility" means a facility constructed or renovated, by a State agency. (1975, c. 434, s. 2; 1989, c. 23, s. 1; 1993, c. 334, s. 3; 2001-415, s. 2; 2006-190, ss. 9, 10, 11.)

Effect of Amendments. — Session Laws 2006-190, ss. 9 to 11, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date, in subdivision (2), substituted "systems, including systems that consume water or other utilities, and components of these systems by demand and type of energy or other utility use" for "systems and components by demand and type of energy"; in subdivision (2b), inserted "any of" in the introductory language, and substituted "measures, as defined in G.S. 143-64.17, in the facility design and construction that decrease the energy, water, or other utility requirements" for "measures in the facility design and construction that decrease the energy requirements" in sub-subdivision (2b)f.; and in subdivision (3), substituted "central distribution system" for "central energy distribution system" twice, and inserted "for energy, water, or other utility".

Session Laws 2006-190, s. 10, effective August 3, 2006, inserted "any of" in the introductory language of subdivision (2b); in subdivision (2)f., substituted "measures, as defined in G.S. 143-64.17," for "measures", and substituted "energy, water, or other utility" for "energy".

Session Laws 2006-190, s. 11, effective August 3, 2006, in subdivision (3), substituted "central distribution system" for "central energy distribution system" twice, and inserted "for energy, water, or other utility".

§ 143-64.12. Authority and duties of State agencies.

(a) The General Assembly authorizes and directs that State agencies shall carry out the construction and renovation of State facilities, under their jurisdiction in such a manner as to further the policy declared herein, ensuring the use of life-cycle cost analyses and practices to conserve energy, water, and other utilities.

(b) The Department of Administration shall develop and implement policies, procedures, and standards to ensure that State purchasing practices improve efficiency regarding energy, water, and other utility use and take the cost of the product over the economic life of the product into consideration. The Department of Administration shall adopt and implement Building Energy Design Guidelines. These guidelines shall include energy-use goals and standards, economic assumptions for life-cycle cost analysis, and other criteria on building systems and technologies. The Department of Administration shall modify the design criteria for construction and renovation of facilities to require that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15. The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility and that require no significant expenditure of funds. State departments, institutions, or agencies shall implement these recommendations. Where energy management equipment is proposed for State facilities, the maximum interchangeability and compatibility of equipment components shall be required.

The Department of Administration shall develop a comprehensive program to manage energy, water, and other utility use for State government. Each State agency shall develop and implement a management plan that is consistent with the State's comprehensive program to manage energy, water, and other utility use.

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4. (1975, c. 434, s. 3; 1993, c. 334, s. 4; 2000-140, s. 76(f); 2001-415, s. 3; 2006-190, s. 12.)

Effect of Amendments. — Session Laws 2006-190, s. 12, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date, substituted "practices to conserve energy, water, and other utilities" for "energy conservation practices" in subsection (a); in the first paragraph of subsection (b), deleted "energy" following "State purchasing practices improve" near the beginning, and inserted "regarding energy, water, and other utility use"; and in the second paragraph of subsection (b), deleted "energy management" preceding "program" in two places, inserted "to manage energy, water, and other utility use," substituted "a management" for "an energy management," and added "program to manage energy, water, and other utility use" at the end.

§ 143-64.15. Life-cycle cost analysis.

(a) A life-cycle cost analysis shall include, but not be limited to, all of the following elements:

(1) The coordination, orientation, and positioning of the facility on its physical site.
(2) The amount and type of fenestration employed in the facility.
(3) Thermal characteristics of materials and the amount of insulation incorporated into the facility design.
(4) The variable occupancy and operating conditions of the facility, including illumination levels.
(5) Architectural features that affect the consumption of energy, water, and other utilities.

(b) The life-cycle cost analysis performed for any State facility shall, in addition to the requirements set forth in subsection (a) of this section, include, but not be limited to, all of the following:

(1) An energy-consumption analysis of the facility's energy-consuming systems in accordance with the provisions of subsection (g) of this section.
(2) The initial estimated cost of each energy-consuming system being compared and evaluated.
(3) The estimated annual operating cost of all utility requirements.
(4) The estimated annual cost of maintaining each energy-consuming system.
(5) The average estimated replacement cost for each system expressed in annual terms for the economic life of the facility.

(c) Each entity shall conduct a life-cycle cost analysis pursuant to this section for the construction or the renovation of any State facility or State-assisted facility of 20,000 or more gross square feet. For the replacement of heating, ventilation, and air-conditioning equipment in any State facility or State-assisted facility of 20,000 or more gross square feet, the entity shall conduct a life-cycle cost analysis of the replacement equipment pursuant to this section when the replacement is financed under a guaranteed energy savings contract or financed using repair and renovation funds.

(d) The life-cycle cost analysis shall be certified by a registered professional engineer or bear the seal of a North Carolina registered architect, or both. The engineer or architect shall be particularly qualified by training and experience for the type of work involved, but shall not be employed directly or indirectly by a fuel provider, utility company, or group supported by fuel providers or utility funds. Plans and specifications for facilities involving public funds shall be designed in conformance with the provisions of G.S. 133-1.1.

(e) In order to protect the integrity of historic buildings, no provision of this Article shall be interpreted to require the implementation of measures to conserve energy, water, or other utility use that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic building located within an historic district as provided in Chapters 160A or 153A of the General Statutes; any historic building listed, owned, or under the jurisdiction of an historic properties commission as provided in Chapter 160A or 153A; nor any historic property owned by the State or assisted by the State.

(f) Each State agency shall use the life-cycle cost analysis over the economic life of the facility in selecting the optimum system or combination of systems to be incorporated into the design of the facility.

(g) The energy-consumption analysis of the operation of energy-consuming systems utilities in a facility shall include, but not be limited to, all of the following:

(1) The comparison of two or more system alternatives.
(2) The simulation or engineering evaluation of each system over the entire range of operation of the facility for a year's operating period.

(3) The engineering evaluation of the consumption of energy, water, and other utilities of component equipment in each system considering the operation of such components at other than full or rated outputs. (1993, c. 334, s. 6; 2001-415, ss. 4, 5; 2006-190, s. 13.)

Effect of Amendments. — Session Laws 2006-190, s. 13, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date, inserted "all of" in the introductory language of subsection (a); in subdivision (a)(5), substituted "that affect" for "which affect," and substituted "the consumption of energy, water, and other utilities" for "energy consumption"; in subsection (c), substituted "Each" for "The General Assembly requires each," substituted "shall conduct" for "to conduct," and added the second sentence; in subsection (e), substituted "measures to conserve energy, water, or other utility use" for "energy cost measures"; added "all of the following" in the introductory language of subsection (g); in subdivision (g)(3), deleted "energy" precding "consumption" and substituted "consumption of energy, water, and other utilities" for "energy consumption"; and made stylistic and punctuation changes throughout the section.

Part 2. Guaranteed Energy Savings Contracts for Governmental Units.

§ 143-64.17. Definitions.

As used in this Part:

(1) "Energy conservation measure" means a facility or meter alteration, training, or services related to the operation of the facility or meter, when the alteration, training, or services provide anticipated energy savings or capture lost revenue. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.

c. Automatic energy control systems.

d. Heating, ventilating, or air-conditioning system modifications or replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.

f. Energy recovery systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.

h. Repealed by Session Laws 2006-190, s. 2, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date.

i. Faucets with automatic or metered shut-off valves, leak detection equipment, water meters, water recycling equipment, and wastewater recovery systems.

j. Other energy conservation measures that conserve energy, water, or other utilities.

(2) "Energy savings" means a measured reduction in fuel costs, energy costs, water costs, stormwater fees, other utility costs, or operating

costs, including environmental discharge fees, water and sewer maintenance fees, and increased meter accuracy, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous costs, including captured lost revenues, developed by the governmental unit.

(2a) "Governmental unit" means either a local governmental unit or a State governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment or meters, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.

(6) "Request for proposals" means a negotiated procurement initiated by a governmental unit by way of a published notice that includes the following:

a. The name and address of the governmental unit.
b. The name, address, title, and telephone number of a contact person in the governmental unit.
c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
d. The date, time, and place where proposals must be received.
e. The evaluation criteria for assessing the proposals.
f. A statement reserving the right of the governmental unit to reject any or all the proposals.
g. Any other stipulations and clarifications the governmental unit may require.

(7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 1; 1999-235, ss. 1, 2; 2002-161, s. 2; 2006-190, s. 2.)

Effect of Amendments. — Session Laws 2006-190, s. 2, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date, in the introductory paragraph of subdivision (1), inserted "or meter" following "means a facility", substituted "facility or meter," for "facility," and inserted "or capture lost revenue"; repealed subdivision (1)h.; added subdivisions (1)i. and j.; in subdivision (2), inserted "water costs, stormwater fees, other utility costs" following "fuel costs, energy costs," substituted "costs, including environmental discharge fees, water and sewer maintenance fees, and increased meter accuracy" for "costs," and substituted "costs, including captured lost revenues" for "fuel costs, energy costs, or operating costs"; and substituted "equipment or meters" for "equipment" in subdivision (3).

§ 143-64.17B. Guaranteed energy savings contracts.

(a) A governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed 20 years from the date of the installation and acceptance by the governmental unit of the energy conservation measures provided for under the contract.

(2) The governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building or utility system.

(b) Before entering into a guaranteed energy savings contract, the governmental unit shall provide published notice of the time and place or of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the proposed award or meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide security to the governmental unit in the form acceptable to the Office of the State Treasurer and in an amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the governmental unit have not been made, the governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, "total cost" shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. "Total cost" does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings contract.

(f) In the case of a State governmental unit, a qualified provider shall, when feasible, after the acceptance of the proposal of the qualified provider by the State governmental unit, conduct an investment grade audit. If the results of the audit are not within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, either the State governmental unit or the qualified provider may terminate the project without incurring any additional obligation to the other party. However, if the State governmental unit terminates the project after the audit is conducted and the results of the audit are within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, the State governmental unit shall reimburse the qualified provider the reasonable cost incurred in conducting the audit, and the results of the audit shall become the property of the State governmental unit.

(g) In the case of a State governmental unit, a qualified provider shall provide an annual reconciliation statement based upon the results of the measurement and verification review. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual, not stipulated, energy and operational savings incurred during a given guarantee year. The guarantee year shall consist of a 12-month term commencing from the time that the energy conservation measures become fully operational. A qualified provider shall pay the State governmental unit any shortfall in the guaranteed energy and operational savings after the total year savings have been determined. A surplus in any one year shall not be carried forward or applied to a shortfall in any other year. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 2; 1999-235, s. 3; 2002-161, s. 4; 2003-138, s. 1; 2006-190, s. 3.)

Effect of Amendments. — Session Laws 2006-190, s. 3, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date, substituted "20 years" for "12 years" in subdivision (a)(1); and substituted "building or utility system" for "building" in subdivision (a)(3).

§ 143-64.17G. Report on guaranteed energy savings contracts entered into by local governmental units.

A local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission. The Commission shall compile the information and report it biennially to the Joint Commission on Governmental Operations. In compiling the information, the Local Government Commission shall include information on the energy savings expected to be realized from a contract and, with the assistance of the Office of State Construction, shall evaluate whether expected savings have in fact been realized. (1993 (Reg. Sess., 1994), c. 775, s. 9; 2006-190, s. 4.)

Effect of Amendments. — Session Laws 2006-190, s. 4, effective August 3, 2006, and applicable to contracts entered into or renewed on or after date, substituted "contracts entered into by local governmental units" for "contracts" in the section heading.

§ 143-64.17H. Report on guaranteed energy savings contracts entered into be State governmental units.

A State governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the State Energy Office of the Department of Administration within 30 days of the date the contract is entered into. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract and shall evaluate whether expected savings have in fact been realized. (2002-161, s. 8; 2006-190, s. 5.)

Effect of Amendments. — Session Laws 2006-190, s. 5, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date, rewrote the section heading, which formerly read: "Guaranteed energy savings contract reporting requirements."

ARTICLE 3C.

Contracts to Obtain Consultant Services.

§ 143-64.24. Applicability of Article.

This Article shall not apply to the following agencies:

(1) The General Assembly.
(2) Special study commissions.
(3) The Research Triangle Institute.
(4) The School of Government at the University of North Carolina at Chapel Hill.
(5) Attorneys employed by the North Carolina Department of Justice.
(6) Physicians or doctors performing contractual services for any State agency.
(7) Independent Review Organizations selected by the Commissioner of Insurance pursuant to G.S. 58-50-85.
(8) The University of North Carolina. The Board of Governors of the University of North Carolina must adopt policies and procedures governing contracts to obtain the services of a consultant by the constituent institutions of the University of North Carolina. (1975, c. 887, s. 5; 1977, c. 802, s. 50.57; 2001-446, s. 4.6A; 2006-95, s. 2.1; 2006-264, s. 29(*l*).)

Effect of Amendments. — Session Laws 2006-95, s 2.1, effective July 10, 2006, rewrote the section which read: "This Article shall not apply to the General Assembly, special study commissions, the Research Triangle Institute, or the Institute of Government, nor shall it apply to attorneys employed by the North Carolina Department of Justice, or physicians or doctors performing contractual services for any State agency. This Article shall not apply to Independent Review Organizations selected by the Commissioner of Insurance pursuant to G.S. 58-50-85.".

Session Laws 2006-264, s. 29(*l*), effective August 27, 2006, substituted "The School of Government at the University of North Carolina at Chapel Hill" for "The Institute of Government" in subdivision (4).

ARTICLE 3D.

Procurement of Architectural, Engineering, and Surveying Services.

§ 143-64.31. Declaration of public policy.

(a) It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.

(a1) A resident firm providing architectural, engineering, surveying, or construction management at risk services shall be granted a preference over a nonresident firm, in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident in the State of North Carolina. For purposes of this section, a resident firm is a firm that has paid unemployment taxes or income taxes in North Carolina and whose principal place of business is located in this State.

(b) Public entities that contract with a construction manager at risk under this section shall report to the Secretary of Administration the following information on all projects where a construction manager at risk is utilized:

(1) A detailed explanation of the reason why the particular construction manager at risk was selected.
(2) The terms of the contract with the construction manager at risk.
(3) A list of all other firms considered but not selected as the construction manager at risk and the amount of their proposed fees for services.
(4) A report on the form of bidding utilized by the construction manager at risk on the project.

The Secretary of Administration shall adopt rules to implement the provisions of this subsection including the format and frequency of reporting. (1987, c. 102, s. 1; 1989, c. 230, s. 2; 2001-496, s. 1; 2006-210, s. 1.)

Effect of Amendments. — Session Laws 2006-210, s. 1, effective August 8, 2006, added subsection (a1).

ARTICLE 7.

Persons Admitted to Department of Health and Human Services Institutions to Pay Costs.

§ 143-123. Power to admit indigent persons.

Editor's Note. — Session Laws 2006-66, s. 6.16, provides: "Notwithstanding G.S. 143-23 or any other provision of law, the State Board of Education may use any funds appropriated for State Aid to Local School Administrative units to cover increases in fuel costs.

"Notwithstanding G.S. 143-23 or any other provision of law, all other State agencies may transfer funds within their budgets, including funds appropriated for salaries and wages, to cover the increases in fuel costs."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

ARTICLE 8.

Public Contracts.

§ 143-128. Requirements for certain building contracts.

Local Modification. — (As to Article 8) Alleghany: 1989, c. 211, s. 1; (As to Article 8) Cabarrus 2000-85 (expires June 30, 2005); Chowan: 1989, c. 397, s. 1; Clay: 2006-94, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Dare: 1989, c. 177, s. 1; 1999-40, s. 1; 2003-47, s. 1 (as to design and construction of administration building and renovation of Old Dare Court House, and expires July 1, 2008); Davidson: 1989, c. 398, s. 1; Durham: 1985 (Reg. Sess., 1986), c. 908; (as to Article 8) Forsyth: 2001-54; (as to Article 8) 2001-99 (expires June 30, 2006); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; (as to G.S. 143-128) Greene: 1953, c. 718; Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005); (as to Art. 8) 1997-37; 2002-93, s. 2 (expires June 30, 2005); Mecklenburg: 1993 (Reg. Sess., 1994), c. 573, s. 1; New Hanover: 1983, c. 365; Pasquotank: 1989, c. 268, s. 3; 1989, c. 468, s. 1;

(as to Article 8) Stanly: 2001-99 (expires June 30, 2006); Stokes: 2006-50, s.1; Surry: 1993 (Reg. Sess., 1994), c. 705, s. 1; ; Tyrrell: 1983, c. 208; 1985, c. 120; 1987, c. 58, s. 1; 1987, c. 58, s. 2; Union: 1991, c. 393, s. 1; Wilson: 1991, c. 200; (as to Article 8) Yancey: 2004-7, s. 1 (expires January 1, 2008); (as to Article 8) city of Charlotte: 1987, c. 329, s. 2; 1998-173, s. 1; 2002-93, s. 1 (expires January 1, 2007); 2000-26, s. 1; (as to Article 8) 2001-248, ss. 1, 2; (as to Article 8) 2001-329, s. 4; (as to Article 8) city of Durham: 1985, c. 714; 1985, c. 727; 1987, c. 789; 2001-350, s. 3; (As to Article 8) 1991, c. 107; city of Greensboro: 1995, c. 54, s. 1; (as to Article 8) city of Greenville: 1998-144; 2004-10 (expires January 1, 2010); city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; (As to Article 8) city of Mount Airy: 2003-281, s. 1; city of Roanoke Rapids: 2001-425, s. 3; 2005-174, s. 2; (as to Article 8, except for ss. 143-128.2 and 143-128.3) 2005-174, s. 3 (expires January 1, 2009); (as to Article 8) city of Winston-Salem: 2001-54; town of Ahoskie: 1987 (Reg. Sess., 1988), c. 884; town of Blowing Rock: 2006-171, s. 10 (public parking facility); town of Clayton: 1995, c. 125, s. 1; (as to Article 8) town of Garner: 1993, c. 281, s. 4; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Yadkinville: 1997-3, s. 1; (as to Article 8) village of Bald Head Island: 1989 (Reg. Sess., 1990), c. 925, s. 1; (as to Article 8) village of Pinehurst: 2001-66, s. 1.(a) (expires January 1, 2006); Alamance-Caswell Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987, c. 120; (as to Article 8) College of the Albemarle in the city of Elizabeth City: 2001-66, s. 2.(a) (expires January 1, 2006); Albemarle Hospital Board of Trustees: 1989, c. 468, s. 2; (As to Article 8) Board of Trustees of Guilford Technical Community College: 2002-57, s. 2; Charlotte/Mecklenburg Board of Education: 1999-207, ss. 3, 4; 2001-496, s. 10(c); Currituck County Board of Education and City of Albemarle: 1989, c. 409, s. 1; Board of Trustees of Guilford Technical Community College: 2002-57, s. 2 (expires December 31, 2005); 1999-102, s. 1; 2001-496, s. 10(b); (as to Chapter 143, Articles 3 and 8) Piedmont Triad International Authority: 1998-55, s. 11; 2002-146, s. 8 (expires January 1, 2010); Tyrrell County Board of Education: 1983, c. 580; 1985, c. 120; Wake County Board of Education: 2001-44, ss. 2, 3 (expires July 1, 2005); (as to Article 8) University of North Carolina at Chapel Hill and East Carolina University: 1987, c. 803, s. 3; University of North Carolina at Chapel Hill: 1985 (Reg. Sess., 1986), c. 865, s. 3; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; 2003-269, s. 1; (as to Article 8) New Hanover Regional Medical Center: 2001-496, s. 10(d) (expires December 31, 2007).

CASE NOTES

Suit Against One Prime Contractor by Another. —

Trial court did not err in entering judgment for the prime electrical contractor on the prime general contractor's third-party claim under G.S. 143-128(b) to recover the cost of a subcontractor's services for repainting walls allegedly damaged by the electrical contractor, where the State contract required timely and effective notice to any prime contractor allegedly responsible for damage and the general contractor did not notify the electrical contractor until several months after the damage occurred and months after the repairs were done. Absent timely and effective notice, no duty arose on the electrical contractor's part to settle the claim or resolve the dispute under the contract. D.W.H. Painting Co. v. D.W. Ward Constr. Co., 174 N.C. App. 327, 620 S.E.2d 887, 2005 N.C. App. LEXIS 2366 (2005).

§ 143-129. Procedure for letting of public contracts.

(a) Bidding Required. — No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than three hundred thousand dollars ($300,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars ($90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement and Letting of Contracts. — Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

The advertisements for bidders required by this section shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Proposals may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof may assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and the board or governing body shall award the contract to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) Contract Execution and Security. — All contracts to which this section applies shall be executed in writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and the contract shall not be altered except by written agreement of the contractor and the board or governing body. The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

(d) Use of Unemployment Relief Labor. — Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Exceptions. — The requirements of this Article do not apply to:

(1) The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof; or (ii) any other government unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or payment in full that may be required by regulations of the governmental unit or agency disposing of the property.

(2) Cases of special emergency involving the health and safety of the people or their property.

(3) Purchases made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.

(4) Construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.

(5) Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to G.S. 143-131.

(6) Purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when: (i) a particular medical item or prosthetic appliance is needed; (ii) a particular product is ordered by an attending physician for his patients; (iii) additional products are needed to complete an ongoing job or task; (iv) products are purchased for "over-the-counter" resale; (v) a particular product is needed or desired for experimental, developmental, or research work; or (vi) equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital shall keep a record of all purchases made pursuant to this subdivision. These records are subject to public inspection.

(7) Purchases of information technology through contracts established by the State Office of Information Technology Services as provided in G.S. 147-33.82(b) and G.S. 147-33.92(b).

(8) Guaranteed energy savings contracts, which are governed by Article 3B of Chapter 143 of the General Statutes.

(9) Purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.

(10) Purchase of used apparatus, supplies, materials, or equipment. For purposes of this subdivision, remanufactured, refabricated or demo apparatus, supplies, materials, or equipment are not included in the exception. A demo item is one that is used for demonstration and is sold by the manufacturer or retailer at a discount.

(11) Contracts by a public entity with a construction manager at risk executed pursuant to G.S. 143-128.1.

(12) **(Repealed effective July 1, 2011)** Build-to-suit capital leases with a private developer under G.S. 115C-532.

(f) Repealed by Session Laws 2001-328, s. 1, effective August 2, 2001.

(g) Waiver of Bidding for Previously Bid Contracts. — When the governing board of any political subdivision of the State, or the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

(1) The United States of America or any federal agency;

(2) The State of North Carolina or any agency or political subdivision of the State; or

(3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more

favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

(h) Transportation Authority Purchases. — Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

(1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.

(2) Proposals shall be solicited from an adequate number of qualified sources.

(3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.

(4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.

(5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6; 1997-174, ss. 1-4; 1998-185, s. 1; 1998-217, s. 16; 2001-328, s. 1; 2001-487, s. 88; 2001-496, ss. 4, 5; 2005-227, s. 1; 2006-232, s. 2.)

Local Modification. — Clay: 2006-94, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Dare: 1999-40, s. 1; 2003-47, s. 1 (as to design and construction of administration building and renovation of Old Dare Court House, and expires July 1, 2008); Forsyth: 1987 (Reg. Sess., 1988), c. 927; 1993, c. 128, s. 1; Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; Greene: 1953, c. 718; Guilford: 1987 (Reg. Sess., 1988), c. 1010, s. 2; Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005); Mecklenburg: 1987, cc. 184, 220, 823; 1989, c. 150, s. 1; 1993 (Reg. Sess., 1994), c. 709, s. 1; 1997-184, s. 1; Pasquotank: 1979, 2nd Sess., c. 1164; 1989, c. 268, s. 3; Stokes: 2006-50, s. 1; Surry: 1993 (Reg. Sess., 1994), c.705, s. 1; Union: 1991, c. 393, s. 1; Wilson: 1991, c. 200; city of Bessemer City: 1985 (Reg. Sess., 1986), c. 959; 1981, c. 89; 1987, cc. 151, 329, s. 1; 1991, c. 200; city of Charlotte: 1995, c. 273, s. 1; 2000-26, s. 1; 2002-91, s. 1; city of Durham: 1983, c. 458; 1991 (Reg. Sess., 1992), c. 992, s. 1; 2001-350, s. 3; city of Greensboro: 1987, c. 53, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1010, s. 2; 1995, c. 218, s. 1; city of Greenville; 1989, c. 18, s. 1; city of Lexington: 1987, c. 21; city of Kings Mountain: 1985 (Reg. Sess., 1986), c. 959; 1981, c. 89; city of Monroe: 1989, c. 18, s. 1; 2000-35, s. 1; city of Roanoke Rapids: 2001-245, s. 3; 2005-174, s. 2; city of Rocky Mount; 1989, c. 18, s. 1; city of Shelby: 1987, c. 87; city of Wilson: 1985 (Reg. Sess., 1986), c. 871; 1987 (Reg. Sess., 1988), c. 1108, s. 11; city of Winston-Salem: 1985, c. 632; 1987, c. 575; 1987 (Reg. Sess., 1988), c. 927; town of Blowing Rock: 2006-171, s. 10 (public parking facility); town of Clayton: 1995, c. 125, s. 1; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Newport: 2000-97, s. 4 (one-time exemption before February 1, 2001); town of Southern Shores: 1995, c. 70, s. 1; town of Yadkinville, 1997-3, s. 1; Alamance-Caswell Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987, c. 120; Albermarle Hospital Board of Trustees: 1989, c. 468, s. 2; Bladen County Board of Education: 1973, c. 891; Charlotte-Mecklenburg Board of Education: 1981, c. 477; 1999-207, ss. 2, 3, 4; 2001-496, s. 10(c); Wake County Board of Education: 2001-44, ss. 1-3 (expires July 1, 2005); Forsyth/Stokes Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987 (Reg. Sess., 1988), c. 927; Lee Board of Education: 1953, c. 228; University of North Carolina at Chapel Hill: 1985 (Reg. Sess., 1986), c. 865, s. 3; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; 2003-269, s. 1.

Effect of Amendments. —

Session Laws 2006-232, s. 2, effective August 12, 2006, and repealed effective July 1, 2011, added subdivision (e)(12).

CASE NOTES

Discretionary Nature of Process. — Plaintiff public contracts bidder's 18 U.S.C.S. § 1962 Racketeer Influenced and Corrupt Organizations Act claims against defendants, a state official, other bidders, and co-conspirators, based upon illegal campaign contributions solicited by the official in connection with awarding state fair contracts, failed for lack of standing because being awarded contracts was an expectancy interest only and the discretionary criteria involved in the decision-making process, as evident from G.S. 146-29, 146-29.1, 143-129, in awarding contracts precluded proximate cause as required under 18 U.S.C.S. § 1964(c). Strates Shows v. Amusements of Am., 379 F. Supp. 2d 817, 2005 U.S. Dist. LEXIS 15741 (E.D.N.C. 2005).

§ 143-132. Minimum number of bids for public contracts.

Local Modification. — Alamance, and municipalities and local school administrative units within that county: 1999-93, s. 1; Beaufort, and municipalities and local school administrative units within that county: 1999-93, s. 1; Bertie: 1953, c. 1257; Camden, and municipalities and local school administrative units within that county: 1999-93, s. 1; Clay: 2006-94, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Currituck, and municipalities and local school administrative units within that county: 1999-93, s. 1; Dare: 1999-40, s. 1; 2003-47, s. 1 (as to design and construction of administration building and renovation of Old Dare Court House, and expires July 1, 2008); Forsyth: 1993, c. 128, s. 1; Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; Northampton: 1953, c. 1257; Pasquotank and Perquimans, and municipalities and local school administrative units within those counties: 1999-93, s. 1; Stokes: 2006-50, s. 1; Surry: 1993 (Reg.Sess., 1994), c. 705. s. 1; Wilson: 1991, c. 200; city of Durham: 2001-350, s. 3; city of Elizabeth City: 2001-227, s. 1; city of Roanoke Rapids: 2001-245, s. 3; 2005-174, s. 2; town of Blowing Rock: 2006-171, s. 10 (public parking facility); town of Clayton: 1995, c. 125, s. 1; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Southern Shores: 1995, c. 70, s. 1; town of Yadkinville: 1997-3, s. 1; Alamance-Caswell Area Mental Health, Development Disabilities and Substance Abuse Authority: 1987, c. 120; Charlotte/Mecklenburg Board of Education: 1999-207, ss. 3, 4; 2001-496, s. 10(c); Wake County Board of Education: 2001-44, ss. 2, 3 (expires July 1, 2005); Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; 2003-269, s. 1.

§ 143-135. Limitation of application of Article.

Local Modification. — Ashe: 1959, c. 627; Avery: 1995, c. 175, s. 1; Beaufort: 1955, c. 1136; Brunswick: 1961, c. 503; Catawba: 2004-35 (expires Dec. 30, 2006); Davie: 2005-32, ss. 1, 2 (as to expansion and improvement of Emergency Medical Services Station Number One); Duplin: 1983 (Reg. Sess., 1984), c. 959; 1985, c. 124; Franklin: 1957, c. 288; Halifax: 1957, c. 803; Macon: 1983, c. 355; McDowell: 1959, c. 553; Pender: 1955, c. 187; Union: 1985 (Reg. Sess., 1986), c. 914, s. 1; Watauga: 1993 (Reg. Sess., 1994), c. 667, s. 1; (as to Anne Marie Drive Park) 2005-197, s. 7; city of Belmont: 1967, c. 419; city of Gastonia: 1967, c. 392; city of Goldsboro: 1991, c. 555, s. 10; city of Lumberton: 1983 (Reg. Sess., 1984), c. 950; city of Marion: 1959, c. 553; city of Monroe: 1985, c. 128; 2000-35, s. 1; city of Newtown: 2004-35 (expires Dec. 30, 2006); town of Boone: (as to Anne Marie Drive Park) 2005-197, s. 7; town of Booneville: 1993 (Reg. Sess., 1994), c. 667, s. 1; town of Chapel Hill: 2000-97, s. 1; town of Wake Forest: 2003-32, (as to use of qualified labor on electrical distribution feeder circuits project for which construction on the first phase begins no later than December 31, 2003 and construction on the final phase commences no later than December 31, 2009, and as to use of qualified labor on Electrical Substation project for which construction on the first phase begins no later than December 31, 2006); city of Fayetteville Public Works Commission: 2006-48, s. 1 (expires January 1, 2012); Macon County School Administrative Unit: 1983, c. 355.

ARTICLE 8B.

State Building Commission.

§ 143-135.27. (Effective until July 1, 2007) Definition of capital improvement project.

As used in this Article, "State capital improvement project" means the construction of and any alteration, renovation, or addition to State buildings, as defined in G.S. 143-336, for which State funds, as defined in G.S. 143-1, are used and which is required by G.S. 143-129 to be publicly advertised. (1987, c. 71, s. 1; 2001-442, s. 4.)

Section Set Out Twice. — The section above is effective until July 1, 2007. For the section as effective July 1, 2007, see the following section, also numbered G.S. 143-135.27.

§ 143-135.27. (Effective July 1, 2007) Definition of capital improvement project.

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the preceding section, also numbered G.S. 143-135.27.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 87, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-1-1" for "G.S. 143-1."

ARTICLE 9.

Building Code Council and Building Code.

§ 143-138. North Carolina State Building Code.

(a) Preparation and Adoption. — The Building Code Council may prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Before the adoption of the Code, or any part of the Code, the Council shall hold at least one public hearing. A notice of the public hearing shall be published in the North Carolina Register at least 15 days before the date of the hearing. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Building Code as adopted by the Building Code Council is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars ($80.00) or more per housing unit. The change can become effective only in accordance with G.S. 143-138(d). Neither the Department of Insurance nor the Council shall be required to expend any monies to pay for the preparation of any fiscal note under this section by any person outside of the Department or Council unless the Department or Council contracts with a third-party vendor to prepare the fiscal note.

(b) Contents of the Code. — The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily.

(c) Standards to Be Followed in Adopting the Code. — All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed reasonably to those ends. Requirements of the Code shall conform to good engineering practice. The Council may use as guidance, but is not required to adopt, the requirements of the International Building Code of the International Code Council, the Standard Building Code of the Southern Building Code Congress International, Inc., the Uniform Building Code of the International Conference of Building Officials, the National Building Code of the Building Officials and Code Administrators, Inc., the National Electric Code, the Life Safety Code, the National Fuel Gas Code, the Fire Prevention Code of the National Fire Protection Association, the Safety Code for Elevators and Escalators, and the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, and standards promulgated by the American National Standards Institute, Standards Underwriters' Laboratories, Inc., and similar national or international agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(d) Amendments of the Code. — The Building Code Council may revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

(e) Effect upon Local Codes. — The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434.

(f) Repealed by Session Laws 1989, c. 681, s. 3.

(g) Publication and Distribution of Code. — The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
Office of Juvenile Justice	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Department of Cultural Resources [State Library]	1
Supreme Court Library	1
Legislative Library	1
Office of Administrative Hearings	1
Rules Review Commission	1
Schools	
All state-supported colleges and universities in the State of North Carolina *	1 each

OFFICIAL OR AGENCY	NUMBER OF COPIES
Local Officials	
Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public. The proceeds from sales of the Building Code shall be credited to the Insurance Regulatory Fund under G.S. 58-6-25.

(h) Violations. — Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code, except for violations of occupancy limits established by either, shall be guilty of a Class 3 misdemeanor and shall upon conviction only be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. Violation of occupancy limits established pursuant to the North Carolina State Building Code shall be a Class 3 misdemeanor. Any violation incurred more than one year after another conviction for violation of the occupancy limits shall be treated as a first offense for purposes of establishing and imposing penalties.

(i) Section 1008 of Chapter X of Volume 1 of the North Carolina State Building Code, Title "Special Safety to Life Requirements Applicable to Existing High-Rise Buildings" as adopted by the North Carolina State Building Code Council on March 9, 1976, as ratified and adopted as follows:

SECTION 1008-SPECIAL SAFETY TO LIFE REQUIREMENTS APPLICABLE TO EXISTING HIGH-RISE BUILDINGS

1008 — GENERAL.

(a) Applicability. — Within a reasonable time, as fixed by "written order" of the building official, and except as otherwise provided in subsection (j) of this section every building the [then] existing, that qualifies for classification under Table 1008.1 shall be considered to be a high-rise building and shall be provided with safety to life facilities as hereinafter specified. All other buildings shall be considered as low-rise. NOTE: The requirements of Section 1008 shall be considered as minimum requirements to provide for reasonable safety to life requirements for existing buildings and where possible, the owner and designer should consider the provisions of Section 506 applicable to new high-rise buildings.

(b) Notification of Building Owner. — The Department of Insurance will send copies of amendments adopted to all local building officials with the suggestion that all local building officials transmit to applicable building owners in their jurisdiction copies of adopted amendments, within six months from the date the amendments are adopted, with the request that each building owner respond to the local building official how he plans to comply with these requirements within a reasonable time.

NOTE: Suggested reasonable time and procedures for owners to respond to the building official's request is as follows:

(1) The building owner shall, upon receipt of written request from the building official on compliance procedures within a reasonable time, submit an overall plan required by 1008(c) below within one year and within the time period specified in the approved overall plan, but not to exceed five years after the overall plan is approved, accomplish compliance with this section, as evidenced by completion of the work

in accordance with approved working drawings and specifications and by issuance of a new Certificate of Compliance by the building official covering the work. Upon approval of building owner's overall plan, the building official shall issue a "written order", as per 1008(a) above, to comply with Section 1008 in accordance with the approved overall plan.

(2) The building official may permit time extensions beyond five years to accomplish compliance in accordance with the overall plan when the owner can show just cause for such extension of time at the time the overall plan is approved.

(3) The local building official shall send second request notices as per 1008(b) to building owners who have made no response to the request at the end of six months and a third request notice to no response building owners at the end of nine months.

(4) If the building owner makes no response to any of the three requests for information on how the owner plans to comply with Section 1008 within 12 months from the first request, the building official shall issue a "written order" to the building owner to provide his building with the safety to life facilities as required by this section and to submit an overall plan specified by (1) above within six months with the five-year time period starting on the date of the "written order".

(5) For purposes of this section, the Construction Section of the Division of Facility Services, Department of Health and Human Services, will notify all non-State owned I-Institutional buildings requiring licensure by the Division of Facility Services and coordinate compliance requirements with the Department of Insurance and the local building official.

(c) Submission of Plans and Time Schedule for Completing Work. — Plans and specifications, but not necessarily working drawings covering the work necessary to bring the building into compliance with this section shall be submitted to the building official within a reasonable time. (See suggested time in NOTE of Section 1008(b) above). A time schedule for accomplishing the work, including the preparation of working drawings and specifications shall be included. Some of the work may require longer periods of time to accomplish than others, and this shall be reflected in the plan and schedule.

NOTE: Suggested Time Period For Compliance:

SUGGESTED TIME PERIOD FOR COMPLIANCE

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
Signs in Elevator Lobbies and Elevator Cabs	1008.2(h)	1008.3(h)	1008.4(h)	180 days
Emergency Evacuation Plan	1008(b)	NOTE:		180 days
Corridor Smoke Detectors (Includes alternative door closers)	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Manual Fire Alarm	1008.2(a)	1008.3(a)	1008.4(a)	1 year
Voice Communication System Required	1008.2(b)	1008.3(b)	1008.4(b)	2 years
Smoke Detectors Required	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Protection and Fire Stopping for Vertical Shafts	1008.2(f)	1008.3(f)	1008.4(f)	3 years

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
Special Exit Requirements-Number, Location and Illumination to be in accordance with Section 1007	1008.2(e)	1008.3(e)	1008.4(e)	3 years
Emergency Electrical Power Supply	1008.2(d)	1008.3(d)	1008.4(d)	4 years
Special Exit Facilities Required	1008.2(e)	1008.3(e)	1008.4(e)	5 years
Compartmentation for Institutional Buildings	1008.2(f)	1008.3(f)	1008.4(f)	5 years
Emergency Elevator Requirements	1008.2(h)	1008.3(h)	1008.4(h)	5 years
Central Alarm Facility Required		1008.3(i)	1008.4(i)	5 years
Areas of Refuge Required on Every Eighth Floor			1008.4(j)	5 years
Smoke Venting			1008.4(k)	5 years
Fire Protection of Electrical Conductors			1008.4(l)	5 years
Sprinkler System Required			1008.4(m)	5 years

(d) Building Official Notification of Department of Insurance. — The building official shall send copies of written notices he sends to building owners to the Engineering and Building Codes Division for their files and also shall file an annual report by August 15th of each year covering the past fiscal year setting forth the work accomplished under the provisions of this section.

(e) Construction Changes and Design of Life Safety Equipment. — Plans and specifications which contain construction changes and design of life safety equipment requirements to comply with provisions of this section shall be prepared by a registered architect in accordance with provisions of Chapter 83A of the General Statutes or by a registered engineer in accordance with provisions of Chapter 89C of the General Statutes or by both an architect and engineer particularly qualified by training and experience for the type of work involved. Such plans and specifications shall be submitted to the Engineering and Building Codes Division of the Department of Insurance for approval. Plans and specifications for I-Institutional buildings licensed by the Division of Facility Services as noted in (b) above shall be submitted to the Construction Section of that Division for review and approval.

(f) Filing of Test Reports and Maintenance on Life Safety Equipment. — The engineer performing the design for the electrical and mechanical equipment, including sprinkler systems, must file the test results with the Engineering and Building Codes Division of the Department of Insurance, or to the agency designated by the Department of Insurance, that such systems have been tested to indicate that they function in accordance with the standards specified in this section and according to design criteria. These test results shall be a prerequisite for the Certificate of Compliance required by (b) above. Test results for I-Institutional shall be filed with the Construction Section, Division of Facility Services. It shall be the duty and responsibility of the owners of Class I, II and III buildings to maintain smoke detection, fire detection, fire control, smoke removal and venting as required by this section and similar

emergency systems in proper operating condition at all times. Certification of full tests and inspections of all emergency systems shall be provided by the owner annually to the fire department.

(g) Applicability of Chapter X and Conflicts with Other Sections. — The requirements of this section shall be in addition to those of Sections 1001 through 1007; and in case of conflict, the requirements affording the higher degree of safety to life shall apply, as determined by the building official.

(h) Classes of Buildings and Occupancy Classifications. — Buildings shall be classified as Class I, II or III according to Table 1008.1. In the case of mixed occupancies, for this purpose, the classification shall be the most restrictive one resulting from the application of the most prevalent occupancies to Table 1008.1.

FOOTNOTE: Emergency Plan. — Owners, operators, tenants, administrators or managers of high-rise buildings should consult with the fire authority having jurisdiction and establish procedures which shall include but not necessarily be limited to the following:

(1) Assignment of a responsible person to work with the fire authority in the establishment, implementation and maintenance of the emergency pre-fire plan.

(2) Emergency plan procedures shall be supplied to all tenants and shall be posted conspicuously in each hotel guest room, each office area, and each schoolroom.

(3) Submission to the local fire authority of an annual renewal or amended emergency plan.

(4) Plan should be completed as soon as possible.

1008.1 — ALL EXISTING BUILDINGS SHALL BE CLASSIFIED AS CLASS I, II AND III ACCORDING TO TABLE 1008.1.

TABLE 1008.1

Scope

CLASS	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
CLASS I	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	60′ but less than 120′ above average grade or 6 but less than 12 stories above average grade.
	Group I-Institutional-Unrestrained	36′ but less than 60′ above average grade or 3 but less than 6 stories above average grade.
CLASS II	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	120′ but less than 250′ above average grade or 12 but less than 25 stories above average grade.
	Group I-Institutional-Unrestrained	60′ but less than 250′ above average grade or 6 but less than 25 stories above average grade.
	Group R-Residential	250′ or 25 stories

CLASS	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
CLASS III	Group B-Business Group E-Educational Group I-Institutional Group A-Assembly Group H-Hazardous	above average grade.

NOTE 1: The entire building shall comply with this section when the building has an occupied floor above the height specified, except that portions of the buildings which do not exceed the height specified are exempt from this section, subject to the following provisions:

(a) Low-rise portions of Class I buildings must be separated from high-rise portions by one-hour construction.

(b) Low-rise portions of Class II and III buildings must be separated from high-rise portions by two-hour construction.

(c) Any required exit from the high-rise portion which passes through the low-rise portions must be separated from the low-rise portion by the two-hour construction.

NOTE 2: The height described in Table 1008.1 shall be measured between the average grade outside the building and the finished floor of the top occupied story.

NOTE 3: Public parking decks meeting the requirements of Section 412.7 and less than 75 feet in height are exempt from the requirements of this section when there is no other occupancy above or below such deck.

NOTE 4: Special purpose equipment buildings, such as telephone equipment buildings housing the equipment only, with personnel occupant load limited to persons required to maintain the equipment may be exempt from any or all of these requirements at the discretion of the Engineering and Building Codes Division provided such special purpose equipment building is separated from other portions of the building by two-hour fire rated construction.

1008.2—REQUIREMENTS FOR EXISTING CLASS I BUILDINGS.

All Class I buildings shall be provided with the following:

(a) An approved manual fire alarm system, meeting the requirements of Section 1125 and applicable portions of NFPA 71, 72A, 72B, 72C or 72D, shall be provided unless the building is fully sprinklered or equipped with an approved automatic fire detection system connected to the fire department.

(b) All Class I buildings shall meet the requirements of Sections 1001-1007.

(c) Smoke Detectors Required. — At least one approved listed smoke detector tested in accordance with UL-167, capable of detecting visible and invisible particles of combustion shall be installed as follows:

(1) All buildings classified as institutional, residential and assembly occupancies shall be provided with listed smoke detectors in all required exit corridors spaced no further than 60′ on center or more than 15′ from any wall. Exterior corridors open to the outside are not required to comply with this requirement. If the corridor walls have one-hour fire resistance rating with all openings protected with 1-3/4 inch solid wood core or hollow metal door or equivalent and all corridor doors are equipped with approved self-closing devices, the smoke detectors in the corridor may be omitted. Detectors in corridors may be omitted when each dwelling unit is equipped with smoke detectors which activate the alarm system.

(2) In every mechanical equipment, boiler, electrical equipment, elevator equipment or similar room unless the room is sprinklered or the room is separated from other areas by two-hour fire resistance construction with all openings therein protected with approved fire dampers and Class B fire doors. (Approved listed fire (heat) detectors may be submitted for these rooms.)

(3) In the return air portion of every air conditioning and mechanical ventilation system that serves more than one floor.

(4) The activation of any detector shall activate the alarm system, and shall cause such other operations as required by this Code.

(5) The annunciator shall be located near the main entrance or in a central alarm and control facility.

NOTE 1: Limited area sprinklers may be supplied from the domestic water system provided the domestic water system is designed to support the design flow of the largest number of sprinklers in any one of the enclosed areas. When supplied by the domestic water system, the maximum number of sprinklers in any one enclosed room or area shall not exceed 20 sprinklers which must totally protect the room or area.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above.

(1) Emergency, exit and elevator cab lighting.

(2) Emergency illumination for corridors, stairs, etc.

(3) Emergency Alarms and Detection Systems. — Power supply for fire alarm and fire detection. Emergency power does not need to be connected to fire alarm or detection systems when they are equipped with their own emergency power supply from float or trickle charge battery in accordance with NFPA standards.

(e) Special Exit Requirements. — Exits and exitways shall meet the following requirements:

(1) Protection of Stairways Required. — All required exit stairways shall be enclosed with noncombustible one-hour fire rated construction with a minimum of 1¾ inch solid core wood door or hollow metal door or 20 minute UL listed doors as entrance thereto. (See Section 1007.5).

(2) Number and Location of Exits. — All required exit stairways shall meet the requirements of Section 1007 to provide for proper number and location and proper fire rated enclosures and illumination of and designation for means of egress.

(3) Exit Outlets. — Each required exit stair shall exit directly outside or through a separate one-hour fire rated corridor with no openings except the necessary openings to exit into the fire rated corridor and from the fire rated corridor and such openings shall be protected with 1¾ inch solid wood core or hollow metal door or equivalent unless the exit floor level and all floors below are equipped with an approved automatic sprinkler system meeting the requirements of NFPA No. 13.

(f) Smoke Compartments Required for I-Institutional Buildings. — Each occupied floor shall be divided into at least two compartments with each compartment containing not more than 30 institutional occupants. Such compartments shall be subdivided with one-half hour fire rated partitions which shall extend from outside wall to outside wall and from floor to and through any concealed space to the floor slab or roof above and meet the following requirements:

(1) Maximum area of any smoke compartment shall be not more than 22,500 square feet in area with both length and width limited to 150 feet.

(2) At least one smoke partition per floor regardless of building size forming two smoke zones of approximately equal size.

(3) All doors located in smoke partitions shall be properly gasketed to insure a substantial barrier to the passage of smoke and gases.

(4) All doors located in smoke partitions shall be no less than 1¾ inch thick solid core wood doors with UL, ¼ inch wire glass panel in metal frames. This glass panel shall be a minimum of 100 square inches and a maximum of 720 square inches.

(5) Every door located in a smoke partition shall be equipped with an automatic closer. Doors that are normally held in the open position shall be equipped with an electrical device that shall, upon actuation of the fire alarm or smoke detection system in an adjacent zone, close the doors in that smoke partition.

(6) Glass in all corridor walls shall be ¼″, UL approved, wire glass in metal frames in pieces not to exceed 1296 square inches.

(7) Doors to all patient rooms and treatment areas shall be a minimum of 1¾ inch solid core wood doors except in fully sprinklered buildings.

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible one-hour fire rated construction with shaft wall openings protected with 1¾ inch solid core wood door or hollow metal door. Vertical shafts (such as electrical wiring shafts) which have openings such as ventilated doors on each floor must be fire stopped at the floor slab level with noncombustible materials having a fire resistance rating not less than one hour to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shafts.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall openings do not need any additional protection.

(h) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. The required emergency sign shall be readable at all times and shall be a minimum of 1/2″ high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

1008.3 — REQUIREMENTS FOR EXISTING CLASS II BUILDINGS.

All Class II buildings must meet the following requirements:

(a) Manual Fire Alarm. — Provide manual fire alarm system in accordance with Section 1008.2(a). In addition, buildings so equipped with sprinkler alarm system or automatic fire detection system must have at least one manual fire alarm station near an exit on each floor as a part of such sprinkler or automatic fire detection and alarm system. Such manual fire alarm systems shall report a fire by floor.

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective basis which can be heard clearly by all occupants in all exit stairways, elevators, elevator lobbies, corridors, assembly rooms and tenant spaces.

NOTE 1: This system shall function so that in the event of one circuit or speaker being damaged or out of service, the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(c) Smoke Detectors Required. — Smoke detectors are required as per Section 1008.2(c). The following are additional requirements:

(1) Storage rooms larger than 24 square feet or having a maximum dimension of over eight feet shall be provided with approved fire detectors or smoke detectors installed in an approved manner unless the room is sprinklered.

(2) The actuation of any detectors shall activate the fire alarm system.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above. Power supply shall furnish power for items listed in Section 1008.2(d) and the following:

(1) Pressurization Fans. — Fans to provide required pressurization, smoke venting or smoke control for stairways.

(2) Elevators. — The designated emergency elevator.

(e) Special Exit Facilities Required. — The following exit facilities are required:

(1) The special exit facilities required in 1008.2(e) are required. All required exit stairways shall be enclosed with noncombustible two-hour fire rated construction with a minimum of 1½ hour Class B-labeled doors as entrance thereto: (See Section 1007.5).

(2) Smoke-Free Stairways Required. — At least one stairway shall be a smoke free stairway in accordance with Section 1104.2 or at least one stairway shall be pressurized to between 0.15 inch and 0.35 inch water column pressure with all doors closed. Smoke-free stairs and pressurized stairs shall be identified with signs containing letters a minimum of ½ inch high containing the words "PRIMARY EXIT STAIRS" unless all stairs are smoke free or pressurized. Approved exterior stairways meeting the requirements of Chapter XI or approved existing fire escapes meeting the requirements of Chapter X with all openings within 10 feet protected with wire glass or other properly designed stairs protected to assure similar smoke-free vertical egress may be permitted. All required exit stairways shall also meet the requirements of Section 1008.2(e).

(3) If stairway doors are locked from the stairway side, keys shall be provided to unlock all stairway doors on every eighth floor leading into the remainder of the building and the key shall be located in a glass enclosure adjacent to the door at each floor level (which may sound an alarm when the glass is broken). When the key unlocks the door, the hardware shall be of the type that remains unlocked after the key is removed. Other means, approved by the building official may be approved to enable occupants and fire fighters to readily unlock stairway doors on every eighth floor that may be locked from the stairwell side. The requirements of this section may be eliminated in smoke-free stairs and pressurized stairs provided fire department access keys are provided in locations acceptable to the local fire authority.

(f) Compartmentation for I-Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible two-hour fire rated construction with Class B-labeled door except for elevator doors which shall be hollow metal or equivalent. All vertical shafts which are not so enclosed must be fire stopped at each floor slab with noncombustible materials having a fire resistance rating of not less than two

hours to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shaft.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall opening do not need any additional protection.

(h) Emergency Elevator Requirements.

(1) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby, or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(2) Identification of Emergency Elevator. — At least one elevator shall be identified as the emergency elevator and shall serve all floor levels.

NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and shall be a minimum of ½ inch high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(i) Central Alarm Facility Required. — A central alarm facility accessible at all times to fire department personnel or attended 24 hours a day, shall be provided and shall contain the following:

(1) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(2) Public service telephone.

(3) Fire detection and alarm systems annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received. These signals shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(4) Master keys for access from all stairways to all floors.

(5) One-way voice emergency communications system controls.

1008.4 — REQUIREMENTS FOR EXISTING CLASS III BUILDINGS.

All Class III Buildings shall be provided with the following:

(a) Manual Fire Alarm System. — A manual fire alarm system meeting the requirements of Section 1008.3(a).

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective or general basis which can be heard clearly by all occupants in all elevators, elevator lobbies, corridors, and rooms or tenant spaces exceeding 1,000 sq. ft. in area.

NOTE 1: This system shall be designed so that in the event of one circuit or speaker being damaged or out of service the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(2) Two-way system for use by both fire fighters and occupants at every fifth level in stairways and in all elevators.

(3) Within the stairs at levels not equipped with two-way voice communications, signs indicating the location of the nearest two-way device shall be provided.

NOTE: The one-way and two-way voice communication systems may be combined.

(c) Smoke Detectors Required. — Approved listed smoke detectors shall be installed in accordance with Section 1008.3(c) and in addition, such detectors shall terminate at the central alarm and control facility and be so designed that it will indicate the fire floor or the zone on the fire floor.

(d) Emergency Electrical Power Supply. — Emergency electrical power supply meeting the requirements of Section 1008.3(d) to supply all emergency equipment required by Section 1008.3(d) shall be provided and in addition, provisions shall be made for automatic transfer to emergency power in not more than ten seconds for emergency illumination, emergency lighting and emergency communication systems. Provisions shall be provided to transfer power to a second designated elevator located in a separate shaft from the primary emergency elevator. Any standpipe or sprinkler system serving occupied floor areas 400 feet or more above grade shall be provided with on-site generated power or diesel driven pump.

(e) Special Exit Requirements. — All exits and exitways shall meet the requirements of Section 1008.3(e).

(f) Compartmentation of Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — Same as Class II buildings. See Section 1008.3(g).

(h) Emergency Elevator Requirements.

(1) Primary Emergency Elevator. — At least one elevator serving all floors shall be identified as the emergency elevator with identification signs both outside and inside the elevator and shall be provided with emergency power to meet the requirements of Section 1008.3(c).

NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(2) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and have a

minimum of ½″ high block letters with the words: "IN CASE OF FIRE, UNLESS OTHERWISE INSTRUCTED, DO NOT USE THE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(4) Machine Room Protection. — When elevator equipment located above the hoistway is subject to damage from smoke particulate matter, cable slots entering the machine room shall be sleeved beneath the machine room floor to inhibit the passage of smoke into the machine room.

(5) Secondary Emergency Elevator. — At least one elevator located in separate shaft from the Primary Emergency Elevator shall be identified as the "Secondary Emergency Elevator" with identification signs both outside and inside the elevator. It will serve all occupied floors above 250 feet and shall have all the same facilities as the primary elevator and will be capable of being transferred to the emergency power system.

NOTE: Emergency power supply can be sized for nonsimultaneous use of the primary and secondary emergency elevators.

(i) Central Alarm and Control Facilities Required.

(1) A central alarm facility accessible at all times to Fire Department personnel or attended 24 hours a day, shall be provided. The facility shall be located on a completely sprinklered floor or shall be enclosed in two-hour fire resistive construction. Openings are permitted if protected by listed 1½ hour Class B-labeled closures or water curtain devices capable of a minimum discharge of three gpm per lineal foot of opening. The facility shall contain the following:

(i) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(ii) Public service telephone.

(iii) Direct communication to the control facility.

(iv) Controls for the voice communication systems.

(v) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received, those signals, shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(2) A control facility (fire department command station) shall be provided at or near the fire department response point and shall contain the following:

(i) Elevator status indicator.

NOTE: Not required in buildings where there is a status indicator at the main elevator lobby.

(ii) Master keys for access from all stairways to all floors.

(iii) Controls for the two-way communication system.

(iv) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received.

(v) Direct communication to the central alarm facility.

(3) The central alarm and control facilities may be combined in a single approved location. If combined, the duplication of facilities and the direct communication system between the two may be deleted.

(j) Areas of Refuge Required. — Class III buildings shall be provided with a designated "area of refuge" at the 250 ft. level and on at least every eighth floor or fraction thereof above that level to be designed so that occupants above the 250 ft. level can enter at all times and be safely accommodated in floor areas

meeting the following requirements unless the building is completely sprinklered:

(1) Identification and Size. — These areas of refuge shall be identified on the plans and in the building as necessary. The area of refuge shall provide not less than 3 sq. ft. per occupant for the total number of occupants served by the area based on the occupancy content calculated by Section 1105. A minimum of two percent (2%) of the number of occupants on each floor shall be assumed to be handicapped and no less than 16 sq. ft. per handicapped occupant shall be provided. Smoke proof stairways meeting the requirements of Section 1104.2 and pressurized stairways meeting the requirements of Section 1108.3(e)(2) may be used for ambulatory occupants at the rate of 3 sq. ft. of area of treads and landings per person, but in no case shall the stairs count for more than one-third of the total occupants. Doors leading to designated areas of refuge from stairways or other areas of the building shall not have locking hardware or shall be automatically unlocked upon receipt of any manual or automatic fire alarm signal.

(2) Pressurized. — The area of refuge shall be pressurized with 100% fresh air utilizing the maximum capacity of existing mechanical building air conditioning system without recirculation from other areas or other acceptable means of providing fresh air into the area.

(3) Fire Resistive Separation. — Walls, partitions, floor assemblies and roof assemblies separating the area of refuge from the remainder of the building shall be noncombustible and have a fire resistance rating of not less than one hour. Duct penetrations shall be protected as required for penetrations of shafts. Metallic piping and metallic conduit may penetrate or pass through the separation only if the openings around the piping or conduit are sealed on each side of the penetrations with impervious noncombustible materials to prevent the transfer of smoke or combustion gases from one side of the separation to the other. The fire door serving as a horizontal exit between compartments shall be so installed, fitted and gasketed to provide a barrier to the passage of smoke.

(4) Access Corridors. — Any corridor leading to each designated area of refuge shall be protected as required by Sections 1104 and 702. The capacity of an access corridor leading to an area of refuge shall be based on 150 persons per unit width as defined in Section 1105.2. An access corridor may not be less than 44 inches in width. The width shall be determined by the occupant content of the most densely populated floor served. Corridors with one-hour fire resistive separation may be utilized for area of refuge at the rate of three sq. ft. per ambulatory occupant provided a minimum of one cubic ft. per minute of outside air per square foot of floor area is introduced by the air conditioning system.

(5) Penetrations. — The continuity of the fire resistance at the juncture of exterior walls and floors must be maintained.

(k) Smoke Venting. — Smoke venting shall be accomplished by one of the following methods in nonsprinklered buildings:

(1) In a nonsprinklered building, the heating, ventilating and air conditioning system shall be arranged to exhaust the floor of alarm origin at its maximum exhausting capacity without recirculating air from the floor of alarm origin to any other floor. The system may be arranged to accomplish this either automatically or manually. If the air conditioning system is also used to pressurize the areas of refuge, this function shall not be compromised by using the system for smoke removal.

(2) Venting facilities shall be provided at the rate of 20 square feet per 100 lineal feet or 10 square feet per 50 lineal feet of exterior wall in each story and distributed around the perimeter at not more than 50 or 100 foot intervals openable from within the fire floor. Such panels and their controls shall be clearly identified.

(3) Any combination of the above two methods or other approved designs which will produce equivalent results and which is acceptable to the building official.

(l) Fire Protection of Electrical Conductors. — New electrical conductors furnishing power for pressurization fans for stairways, power for emergency elevators and fire pumps required by Section 1008.4(d) shall be protected by a two-hour fire rated horizontal or vertical enclosure or structural element which does not contain any combustible materials. Such protection shall begin at the source of the electrical power and extend to the floor level on which the emergency equipment is located. It shall also extend to the emergency equipment to the extent that the construction of the building components on that floor permits. New electrical conductors in metal raceways located within a two-hour fire rated assembly without any combustible therein are exempt from this requirement.

(m) Automatic Sprinkler Systems Required.

(1) All areas which are classified as Group M-mercantile and Group H-hazardous shall be completely protected with an automatic sprinkler system.

(2) All areas used for commercial or institutional food preparation and storage facilities adjacent thereto shall be provided with an automatic sprinkler system.

(3) An area used for storage or handling of hazardous substances shall be provided with an automatic sprinkler system.

(4) All laboratories and vocational shops in Group E, Educational shall be provided with an automatic sprinkler system.

(5) Sprinkler systems shall be in strict accordance with NFPA No. 13 and the following requirements:
The sprinkler system must be equipped with a water flow and supervisory signal system that will transmit automatically a water flow signal directly to the fire department or to an independent signal monitoring service satisfactory to the fire department.

(j) Subsection (i) of this section does not apply to business occupancy buildings as defined in the North Carolina State Building Code except that evacuation plans as required on page 8, lines 2 through 16 [Section 1008, footnote following subsection (h)], and smoke detectors as required for Class I Buildings as required by Section 1008.2, page 11, lines 5 through 21 [Section 1008.2, subdivision (c)(1)]; Class II Buildings as required by Section 1008.3, page 17, lines 17 through 28 and page 18, lines 1 through 10 [Section 1008.3, subsections (c) and (d)]; and Class III Buildings, as required by Section 1008.4, lines 21 through 25 [Section 1008.4, subsection (c)] shall not be exempted from operation of this act as applied to business occupancy buildings, except that the Council shall adopt rules that allow a business occupancy building built prior to 1953 to have a single exit to remain if the building complies with the Building Code on or before December 31, 2006.

(j1) A nonbusiness occupancy building built prior to the adoption of the 1953 Building Code that is not in compliance with Section 402.1.3.5 of Volume IX of the Building Code or Section 3407.2.2 of Volume I of the Building Code must comply with the applicable sections by December 31, 2006.

(k) For purposes of use in the Code, the term "Family Care Home" shall mean an adult care home having two to six residents.

(*l*) When any question arises as to any provision of the Code, judicial notice shall be taken of that provision of the Code. (1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2; 1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5; 1981, c. 677, s. 3; c. 713, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2D; c. 1348, s. 1; 1983, c. 614, s. 3; 1985, c. 576, s. 1; c. 622, s. 2; c. 666, s. 39; 1989, c. 25, s. 2; c. 681, ss. 2, 3, 9, 10, 18, 19; c. 727, ss. 157, 158; 1991 (Reg. Sess., 1992), c. 895, s. 1; 1993, c. 329, ss. 1, 3; c. 539, s. 1009; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 111, s. 1; c. 242, s. 1; c. 507, s. 27.8(r); c. 535, s. 30; 1997-26, ss. 1-3, 5; 1997-443, ss. 11A.93, 11A.94, 11A.118(a), 11A.119(a); 1998-57, s. 2; 1998-172, s. 1; 1998-202, s. 4(u); 1999-456, s. 40; 2000-137, s. 4(x); 2000-140, s. 93.1(a); 2001-141, ss. 1, 2, 3, 4; 2001-421, ss. 1.1, 1.2, 1.5; 2001-424, s. 12.2(b); 2002-144, s. 5; 2003-221, s. 6; 2003-284, s. 22.2; 2004-124, ss. 21.1, 21.2; 2005-205, s. 6.)

Editor's Note. —

This section has been set out to correct a publishing error which appeared in subsection (g).

§ 143-143.21A. Purchase agreements; buyer cancellations.

(a) A purchase agreement for a manufactured home shall include all of the following:

(1) A description of the manufactured home and all accessories included in the purchase.

(2) The purchase price for the home and all accessories.

(3) The amount of deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.

(4) The date the retail purchase agreement is signed.

(5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.

(6) The buyer's signature.

(7) The dealer's signature.

(b) The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, the following statement:

"I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER. I UNDERSTAND ANY CHANGE TO THE TERMS OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS AGREEMENT."

(c) At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer shall give the buyer a copy of the purchase agreement and a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the purchase agreement, be easily detachable, and explain the buyer's right to cancel the purchase and how that right can be exercised.

(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within seven business days, or 15 business days when payment is by personal check, after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired.

(e) If the buyer cancels the purchase after the three-day cancellation period, but before the sale is completed, and if:

(1) The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or

(2) The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's deposit or other payment received from the buyer.

(f) Repealed by Session Laws 2005-451, s. 5, effective April 1, 2006. (1993, c. 409, s. 7; 1999-393, s. 1; 2003-400, s. 7; 2005-451, ss. 1, 5; 2006-259, s. 24.5.)

Effect of Amendments. — Session Laws 2006-259, s. 24.5, effective August 23, 2006, inserted "15 business days when payment is by personal check" in the third sentence of subsection (d).

Article 9C.

North Carolina Code Officials Qualification Board.

§ 143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies.

(a) There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

(1) One member who is a city or county manager;

(2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;

(3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;

(4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;

(5) One member who is a registered architect;

(6) One member who is a registered engineer;

(7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;

(8) One member who is a licensed electrical contractor;

(9) One member who is a licensed plumbing or heating contractor;

(10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the

faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;

(11) One member selected from the faculty of the School of Government at the University of North Carolina at Chapel Hill;

(12) One member selected from the Community Colleges System Office;

(13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,

(14) One member who is a local government fire prevention inspector and one member who is a citizen of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121; (7), (8), and (9) by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; (10) by the deans of the respective schools of engineering of the named universities; (11) by the Dean of the School of Government at the University of North Carolina at Chapel Hill; (12) by the President of the Community Colleges System; and (13) by the Commissioner of Insurance.

(b) The members shall be appointed for staggered terms and the initial appointments shall be made prior to September 1, 1977, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: the members from subdivisions (1), (6) and (10) of subsection (a), and one member from subdivision (3).

For the terms of two years: the member from subdivision (11) of subsection (a), one member from subdivision (2), one member from subdivision (4), one member from subdivision (7), and one member from subdivision (14).

For the terms of three years: the members from subdivisions (8) and (12) of subsection (a), one member from subdivision (2), one member from subdivision (4), and one member from subdivision (14).

For the terms of four years: the members from subdivision (5), (9) and (13) of subsection (a), one member from subdivision (3), and one member from subdivision (7).

Thereafter, as the term of each member expires, his successor shall be appointed for a term of four years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the Governor.

Members of the Board who are public officers shall serve ex officio and shall perform their duties on the Board in addition to the duties of their office.

(c) Vacancies in the Board occurring for any reason shall be filled for the unexpired term by the person making the appointment. (1977, c. 531, s. 1; 1987, c. 564, s. 28; 1989, c. 681, s. 16; 1995, c. 490, s. 12(a); 1999-84, s. 22; 2006-264, s. 29(m).)

Effect of Amendments. — Session Laws 2006-264, s. 29(m), effective August 27, 2006, in subsection (a), substituted "School of Government at the University of North Carolina at Chapel Hill" for "Institute of Government" in subdivision (a)(11) and substituted "Dean of the School of Government at the University of North Carolina at Chapel Hill" for "Director of the Institute of Government" and substituted "Colleges" for "College" in the last paragraph.

ARTICLE 12C.

Retirement Benefits for State Law-Enforcement Officers.

§ 143-166.30. Retirement benefits for State law-enforcement officers.

(a) Definitions. — The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Beneficiary" means any person in receipt of a retirement allowance or other benefit from a Retirement System.

(2) "Creditable service" means membership service plus prior service plus military service allowable with a Retirement System.

(3) "Employer" means the State of North Carolina and its departments, agencies and institutions.

(4) "Law-enforcement officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(5) "Member" means an officer included in the membership of a retirement system including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.

(6) "Officer" means a "law-enforcement officer."

(7) "Participant" means an officer with an individual account with the Supplemental Retirement Income Plan.

(8) "Regular accumulated contributions" means the sum of all contributions of a member made to the Retirement System, together with regular interest thereon, pursuant to G.S. 143-166 as the same appeared prior to January 1, 1985.

(9) "Retirement allowance" means annual payments for life payable in monthly installments continuing until the death of a beneficiary.

(10) "Law-Enforcement Officers' Retirement System" means the system provided for under G.S. 143-166.

(11) "Special annuity account accumulated contributions" means the sum of all contributions of a member or an employer made to the Special Annuity Accounts for Members of the Law-Enforcement Officers' Retirement System, together with regular interest thereon, pursuant to G.S. 143-166.03 as the same appeared prior to January 1, 1985.

(12) "Special Annuity Accounts" means the supplemental defined contribution provisions of the Law-Enforcement Officers' Retirement System, provided for under G.S. 143-166.03 as the same appeared prior to January 1, 1985.

(13) "State" means the State of North Carolina.

(14) "State Retirement System" means the Teachers' and State Employees' Retirement System of North Carolina provided for under Article 1 of Chapter 135 of the General Statutes.

(15) "Supplemental Retirement Income Plan" means a plan created in conformance with Section 401(a), 401(k), or any other section of the Internal Revenue Code of 1954 as amended.

(b) Basic Retirement System. — On and after January 1, 1985, law-enforcement officers employed by the State shall be members of the Teachers' and State Employees' Retirement System and beneficiaries who were last employed as officers by the State, or who are surviving beneficiaries of officers last employed by the State, shall be beneficiaries of the State Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by the State shall be members of the State Retirement System.

(c) Transfers of Assets and Liabilities to Other Retirement Systems. — As of January 1, 1985, certain assets and liabilities of the Law-Enforcement Officers' Retirement System shall be transferred to the Teachers' and State Employees'

Retirement System and the Supplemental Retirement Income Plan in the amounts calculated and in the order of precedence enumerated as follows:

(1) The regular accumulated contributions of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State shall be transferred from the annuity savings fund of the Law-Enforcement Officers' Retirement System to the annuity savings fund of the State Retirement System to the credit of each individual officer.

(2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries last employed as officers by the State and the surviving beneficiaries of officers last employed by the State, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law-Enforcement Officers' Retirement System to the pension accumulation fund of the State Retirement System.

(3) After the transfers provided for above, additional assets in the pension accumulation fund of the Law-Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the State Retirement System, in an amount equal to the ratio of the accrued liabilities on account of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State to the total accrued liabilities on account of all members of the Law-Enforcement Officers' Retirement System.

(4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law-Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan pursuant to subsection (d) of this section to the credit of individual officers.

(d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. — As of January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter called the "Plan," established for the benefit of all law-enforcement officers employed by the State, who shall be participants. The Board of Trustees of the State Retirement System shall administer the Plan and shall, under the terms and conditions otherwise appearing herein, provide Plan benefits either (i) by establishing a separate trust fund in conformance with Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same benefits for participants. The Plan shall be separate and apart from any retirement systems.

In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System and the contributions otherwise provided for in this Article, participants may make voluntary contributions to the Plan to be credited to the designated individual accounts of participants; provided, in no instance shall the total contributions by a participant exceed ten percent (10%) of a participant's compensation within any calendar year.

All contributions to the Plan shall be credited to the individual accounts of participants, and shall be fully and immediately vested in the name of the participant, and shall be invested according to each participant's election, as provided by the Board of Trustees, including but not limited to time deposits, and both fixed and variable investments. The Plan may provide for loans to participants, at reasonable rates of interest to be charged, from participants' individual accounts, and may provide for withdrawal of contributions on account of hardship.

The benefit to a participant in the Plan shall be either a lump-sum distribution or a distribution in periodic installments of the participant's account payable under retirement, disability, or termination of employment. Upon the death of a participant there shall be paid the same lump-sum distribution or periodic installments to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then the benefits shall be paid to the person or persons as the participant may name for this purpose.

(e) State Contributions to the Supplemental Retirement Income Plan. — Under all other restrictions as are herein provided, the State shall contribute monthly to the individual accounts of participants who are employed by the State an amount equal to five percent (5%) of the compensation of each participant. The contributions so paid shall be in addition to the contributions on account of court cost assessments as hereinafter provided.

Contributions shall be made to the individual accounts of all participants in the Plan on a per capita basis in equal shares, equal to the sum of the one-half dollar ($0.50) for each cost of court assessed and collected under G.S. 7A-304.

(e1) Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act. — A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, hereafter referred to as "USERRA", shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA.

(f) Administration. — The provisions of the State Retirement System pertaining to administration and management of funds under G.S. 135-6 and 7 are made applicable to the Plan.

(g) Exemption from Garnishment and Attachment. — The right of a participant in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment.

(h) Notwithstanding any other provisions of law, any pending or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of their transfer to the State Retirement System on January 1, 1985, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, shall in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System.

No eligible officer shall be precluded from exercising that officer's pending or inchoate rights under this section, should the officer elect to make Roth after-tax contributions to the Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the earnings thereon shall not be subsequently transferred to the Teachers' and State Employees' Retirement System. (1983 (Reg. Sess., 1984), c. 1034, s. 248; 1985, c. 479, s. 196(s); 1989, c. 792, s. 2.7; 1995, c. 361, s. 5; 2006-141, s. 1.)

Effect of Amendments. — Session Laws 2006-141, s. 1, effective July 1, 2006, added the second paragraph in subsection (h).

Article 12D.

Separation Allowances for Law-Enforcement Officers.

§ 143-166.41. Special separation allowance.

CASE NOTES

Resolution Restricting Vested Allowance was Improper. — County's resolution, pursuant to its authority under G.S. 143-166.42, restricting a former officer's ability to collect a special separation allowance, impaired the obligation of the state's contract with former officer under the retirement system; because the resolution was enacted after the former officer had retired and his right to receive the special separation had become vested, it was improper. Wiggs v. Edgecombe County, — N.C. App. —, 632 S.E.2d 249, 2006 N.C. App. LEXIS 1645 (2006).

Cited in Finger v. Gaston County, — N.C. App. —, 631 S.E.2d 171, 2006 N.C. App. LEXIS 1396 (2006).

§ 143-166.42. Special separation allowances for local officers.

CASE NOTES

Resolution Restricting Vested Allowance was Improper. — County's resolution, pursuant to its authority under G.S. 143-166.42, restricting a former officer's ability to collect a special separation allowance, impaired the obligation of the state's contract with former officer under the retirement system; because the resolution was enacted after the former officer had retired and his right to receive the special separation had become vested, it was improper. Wiggs v. Edgecombe County, — N.C. App. —, 632 S.E.2d 249, 2006 N.C. App. LEXIS 1645 (2006).

Article 12E.

Retirement Benefits for Local Governmental Law-Enforcement Officers.

§ 143-166.50. Retirement benefits for local governmental law-enforcement officers.

(a) Definitions. — The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, have the following meaning:

(1) "Beneficiary" means any person in receipt of a retirement allowance or other benefit from a Retirement System.

(2) "Employer" means a county, city, town or other political subdivision of the State.

(3) "Law-enforcement officer" means a full-time paid employee of an employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. "Law enforcement officer" also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number

of law enforcement positions approved by the applicable local governing board.

(4) "Law-Enforcement Officers' Retirement System" means the system provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986.

(5) "Local Governmental Employees' Retirement System" means the Local Governmental Employees' Retirement System of North Carolina provided for under Article 3 of Chapter 128 of the General Statutes.

(6) "Member" means an officer included in the membership of a retirement system, including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.

(7) "Officer" means a "law-enforcement officer."

(8) "State" means the State of North Carolina.

(b) Basic Retirement System. — On and after January 1, 1986, law-enforcement officers employed by an employer shall be members of the Local Government Employees' Retirement System, and beneficiaries who were last employed as officers by an employer, or who are surviving beneficiaries of officers last employed by an employer, are beneficiaries of the Local Governmental Employees' Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by an employer are members of the Local Retirement System.

(c) Rights. — Notwithstanding any other provisions of law, any accrued or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of his transfer to the Local Governmental Employees' Retirement System on January 1, 1986, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, may in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System after January 1, 1986.

No eligible officer shall be precluded from exercising that officer's pending or inchoate rights under this section, should the officer elect to make Roth after-tax contributions to the Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the earnings thereon shall not be subsequently transferred to the Local Governmental Employees' Retirement System.

(d) Court Cost Receipts. — Of the sum derived from the cost of court provided for in G.S. 7A-304(a)(3), the amount designated for this Article, except for the amount designated for the provisions of G.S. 143-166.50(e), shall be paid over to the pension accumulation fund of the Local Governmental Employees' Retirement System and shall offset, to the extent of these receipts, the employers' normal contribution rate required in G.S. 128-30(d)(2) as it pertains to law enforcement officers.

(e) Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers. — As of January 1, 1986, all law-enforcement officers employed by a local government employer, are participating members of the Supplemental Retirement Income Plan as provided by Article 5 of Chapter 135 of the General Statutes. In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System, participants may make voluntary contributions to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participants; provided, in no instance shall the total contributions by a participant exceed ten percent (10%) of a participant's compensation within any calendar year. From July 1, 1987, until July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal to at least two percent (2%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participating local officers; and on and after July 1, 1988, local government employers of law enforcement officers shall contribute an amount equal to five percent (5%) of participating local officers' monthly compensation to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participating local officers.

Additional contributions shall also be made to the individual accounts of all participants in the Plan, except for Sheriffs, on a per capita equal-share basis from the sum of one dollar and twenty-five cents ($1.25) for each cost of court collected under G.S. 7A-304.

(e1) Rights of Participants under the Uniformed Services Employment and Reemployment Rights Act. — A participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, hereafter referred to as "USERRA", shall be entitled to all rights and benefits that the participant would have been entitled to under this section had the participant's employment not been interrupted, provided that the participant returns to service as a law enforcement officer while the participant's reemployment rights are protected under the provisions of USERRA. (1985, c. 479, s. 196(t); c. 729, ss. 6, 7; 1985 (Reg. Sess., 1986), c. 1015, s. 2; c. 1019, s. 1; 1995, c. 361, s. 6; 1997-144, s. 2; 2006-141, s. 2.)

Effect of Amendments. — Session Laws 2006-141, s. 2, effective July 1, 2006, added the second paragraph in subsection (c).

ARTICLE 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.

Nutrient management strategy. — Session Laws 2005-190, s. 3(c), as amended by Session Laws 2006-259, s. 31(a), effective July 1, 2005, provides: "The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July 2009. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy."

Implementation; rulemaking. — Session Laws 2005-190, s. 3(e), as amended by Session Laws 2006-259, s. 31(b), effective July 15, 2005, provides: "The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July 2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective."

Other drinking water supply reservoirs. — Session Laws 2005-190, s. 4, as amended by Session Laws 2006-259, s. 31(c), effective July 15, 2005, provides: "The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

Land and Water Conservation Study Commission. — Session Laws 2006-223, ss. 1-12, effective August 10, 2006, provide: "1. Commission Established. — The Land and Water Conservation Commission is hereby established.

"2. Membership. —The Commission shall consist of 16 members as follows:

"(1) Five members appointed by the President Pro Tempore of the Senate.

"(2) Five members appointed by the Speaker of the House of Representatives.

"(3) The State Treasurer or the State Treasurer's designee.

"(4) The Director of the Governor's Policy Office or the Director's designee.

"(5) The Secretary of Environment and Natural Resources or the Secretary's designee.

"(6) Three representatives from the public at large appointed by the Governor.

"3. Cochairs. — The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

"4. Quorum. — A quorum of the Commission shall consist of nine members.

"5. Vacancies. — Any vacancy on the Commission shall be filled by the original appointing authority.

"6. Purpose and Duties. — The Commission shall:

"(1) Identify and evaluate the existing sources of State funding for: (i) the public acquisition of land or interests in land to protect drinking water quality and prevent polluted runoff, conserve rivers, wetlands, floodplains, coastal waters, working farms, working forests, local parks, State parks, game lands and other natural areas, urban forests, and land visible from scenic highways in North Carolina; (ii) historic preservation; and (iii) economic and community development tied to land and water conservation and historic preservation.

"(2) Collect research and information from North Carolina and other states and jurisdictions regarding incentive based techniques and management tools used to protect land and water and assess the applicability of such tools and techniques to land conservation in North Carolina.

"(3) Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address funding needs and other issues affecting land and water conservation in North Carolina.

"(4) Hold at least three public meetings, including at least one meeting in the Mountains, Piedmont, and the Coastal Plain region of the State to present the draft report and recommendations to the public and user groups.

"7. Expenses of Members. — Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"8. Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

"9. Consultants. — The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

"10. Meetings. — The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"11. Report. — The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Commission shall terminate.

"12. Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act."

CASE NOTES

Because the state regulation of the land application of residuals through G.S. 143-211 was comprehensive, constituting a complete and integrated regulatory scheme, the county did not have authority to enact ordinances that also purported to specifically regulate that conduct; the trial court properly found the county ordinance invalid. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156, 2005 N.C. App. LEXIS 906 (2005).

Fact that county permit for land application of biosolids stated that it "does not preclude" compliance with the rules of local governments "which have jurisdiction" did not provide jurisdiction to the county to enact regulations that duplicated and conflicted with what was a comprehensive state regulatory scheme in G.S. 143-211. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156, 2005 N.C. App. LEXIS 906 (2005).

G.S. 143-211, coupled with the permit requirements set forth in the applicable regulations, were so comprehensive in scope that they were intended to comprise a "complete and integrated regulatory scheme" on a statewide basis, thus leaving no room for further local regulation. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156, 2005 N.C. App. LEXIS 906 (2005).

County's biosolids ordinance, which required those in business of application of biosolids to obtain county permit as well as state permit already required and to record warnings in chain of title if biosolids had been applied to land, was invalid because it was preempted by G.S. 143-211, which, coupled with regulations, was a complete and integrated regulatory scheme on a statewide basis, thus it left no room for further local regulation. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156, 2005 N.C. App. LEXIS 906 (2005).

Authority and Discretion of Commission. — Where a contractor had nine open burning piles within 1,000 feet from a dwelling, the North Carolina Department of Environment and Natural Resources and the Environmental Management Commission did not exceed their discretion and authority under G.S. 143-211(c), 143-215.107(a)(1), (3), and 143-215.114A(a)(1) in interpreting each pile to be one violation. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005).

§ 143-214.1. Water; water quality standards and classifications; duties of Commission.

Nutrient management strategy. — Session Laws 2005-190, s. 3(c), as amended by Session Laws 2006-259, s. 31(a), effective July 1, 2005, provides: "The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July 2009. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy."

Implementation; rulemaking. — Session Laws 2005-190, s. 3(e), as amended by Session Laws 2006-259, s. 31(b), effective July 15, 2005, provides: "The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July 2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective."

Other drinking water supply reservoirs. — Session Laws 2005-190, s. 4, as amended by Session Laws 2006-259, s. 31(c), effective July 15, 2005, provides: "The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

§ 143-214.4. Certain cleaning agents containing phosphorus prohibited.

(a) No person may manufacture, store, sell, use, or distribute for sale or use any cleaning agent containing phosphorus in the State, except as otherwise provided in this section.

(b) As used in this section, "cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner or polish, industrial cleaner, or other substance that is used or intended for use for cleaning purposes.

(c) This section shall not apply to cleaning agents which are used:

(1) In agricultural or dairy production;
(2) To clean commercial food or beverage processing equipment or containers;
(3) As industrial sanitizers, metal brighteners, or acid cleaners, including those containing phosphoric acid or trisodium phosphate;
(4) In industrial processes for metal, fabric or fiber cleaning and conditioning;
(5) In hospitals, clinics, nursing homes, other health care facilities, or veterinary hospitals or clinics;
(6) By a commercial laundry or textile rental service company or any other commercial entity: (i) to provide laundry service to hospitals, clinics, nursing homes, other health care facilities, or veterinary hospitals or clinics; (ii) to clean textile products supplied to industrial or commercial users of the products on a rental basis; or (iii) to clean professional, industrial or commercial work uniforms;
(7) In the manufacture of health care or veterinary supplies;
(8) In any medical, biological, chemical, engineering or other such laboratory, including those associated with any academic or research facility;
(9) As water softeners, antiscale agents, or corrosion inhibitors, where such use is in a closed system such as a boiler, air conditioner, cooling tower, or hot water heating system;
(10) To clean hard surfaces including windows, sinks, counters, floors, ovens, food preparation surfaces, and plumbing fixtures.

(d) This section shall not apply to cleaning agents which:

(1) Contain phosphorus in an amount not exceeding five-tenths of one percent (0.5%) by weight which is incidental to manufacturing;
(2) Contain phosphorus in an amount not exceeding eight and seven-tenths percent (8.7%) by weight and which are intended for use in a commercial or household dishwashing machine;
(3) Are manufactured, stored, sold, or distributed for use solely outside the State.

(e) The Commission may permit the use of a cleaning agent which contains phosphorus in an amount exceeding five-tenths of one percent (0.5%) but not exceeding eight and seven-tenths percent (8.7%) by weight upon a finding that there is no adequate substitute for such cleaning agent, or that compliance with this section would otherwise be unreasonable or create a significant hardship on the user. The Commission shall adopt rules to administer this subsection.

(f) Any person who manufactures, sells or distributes any cleaning agent in violation of this section shall be guilty of a Class 3 misdemeanor punishable only by a fine not to exceed fifty dollars ($50.00).

(g) **(Effective until July 1, 2007)** Any person who uses any cleaning agent in violation of the provisions of this section shall be responsible for an infraction for which the sanction is a penalty of not more than ten dollars ($10.00). Notwithstanding G.S. 143-3.1(a), the clear proceeds of infractions pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(g) **(Effective July 1, 2007)** Any person who uses any cleaning agent in violation of the provisions of this section shall be responsible for an infraction for which the sanction is a penalty of not more than ten dollars ($10.00). Notwithstanding G.S. 14-3.1(a), the clear proceeds of infractions pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1987, c. 111, s. 1; c. 817; c. 827, s. 154; 1993, c. 539, s. 1017; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 61; 2006-203, s. 88.)

Subsection (g) Set Out Twice. — The first version of subsection (g) set out above is effective until July 1, 2007. The second version of subsection (g) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 88, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 14-3.1(a)" for "G.S. 143-3.1(a)" in subsection (g).

§ 143-214.7. Stormwater runoff rules and programs.

(a) Policy, Purpose and Intent. — The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish waters.
(2) Water supply watersheds.
(3) Outstanding resource waters.
(4) High quality waters.

(5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(c1) Any land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall be enforced by any owner of the land on which the best management practice or project is located, any adjacent property owners, any downstream property owners who would be injured by failure to enforce the land-use restriction, any local government having jurisdiction over any part of the land on which the best management practice or project is located, or the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action, without first having exhausted any available administrative remedies. A land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(d1) A retail merchant shall not use more than 400 square feet of impervious surface area within the portion of the merchant's premises that is designed to be used for vehicular parking for the display and sale of nursery stock, as that term is defined by the Board of Agriculture pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

(1) Collects and treats stormwater on-site using a treatment system that is designed to remove at least eighty-five percent (85%) of total suspended solids. For purposes of this subdivision, a treatment system includes, but is not limited to, a filtration system or a detention system.

(2) Collects and stores stormwater for reuse on-site for irrigation or other purposes.

(3) Collects and discharges stormwater to a local or regional stormwater collection and treatment system.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year. (1989, c. 447, s. 2; 1995, c. 507, s. 27.8(q); 1997-458, s. 7.1; 2004-124, s. 6.29(a); 2006-246, s. 16(b).)

Editor's Note. —

Session Laws 2004-163, s. 15, as amended by Session Laws 2006-246, s. 1(b), provides: "This act is effective when it becomes law and expires 1 July 2006."

Session Laws 2006-246, s. 19, directs the Revisor of Statutes not to codify this act, except for the provisions of ss. 16 and 17, but to set out as a note under this section. The text of the act follows.

Session Laws 2006-246, s. 1(a), effective retroactively to July 1, 2006, reads as follows:

"1(a). Disapproval of Certain Rules. — Pursuant to G.S. 150B-21.3 and S.L. 2003-229, the following rules, as adopted by the Environmental Management Commission and approved by the Rules Review Commission on 17 November 2005, are disapproved:

"15A NCAC 2H.1014 (Stormwater Management for Urbanizing Areas)

"15A NCAC 2H.1015 (Urbanizing Area Definitions)

"15A NCAC 2H.1016 (Urbanizing County Designations)

"15A NCAC 2H.1017 (Application Schedule and Required Contents)

"15A NCAC 2H.1018 (Post-Construction Model Practices)

"15A NCAC 2H.1019 (Exceptions)

"15A NCAC 2H.0126 (Stormwater Discharges)

"15A NCAC 2H.0150 (Definitions)

"15A NCAC 2H.0151 (Public Entity Designations)

"15A NCAC 2H.0152 (Petitions)

"15A NCAC 2H.0153 (Application Schedule and Required Contents)

"15A NCAC 2H.0154 (Implementation Schedule)

"15A NCAC 2H.0155 (Post-Construction Model Practices)

"15A NCAC 2H.0156 (Exceptions)"

Session Laws 2006-246, ss. 2-13, effective retroactively to July 1, 2006, and expiring when permanent rules to replace those sections become effective, provide:

"2. Definitions. — The following definitions apply to this act and its implementation:

"(1) The definitions set out in 40 Code of Federal Regulations § 122.2 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003 Edition).

"(2) The definitions set out in G.S. 143-212 and G.S. 143-213.

"(3) The definitions set out in 15A NCAC 2H.0103 (Definitions of Terms).

"(4) The definitions set out in 15A NCAC 2H.1002 (Definitions), except for the definitions of 'Built-upon area', 'Development', and 'Redevelopment', which are defined below.

"(5) 'One-year, 24-hour storm' means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

"(6) 'BMP' means Best Management Practice.

"(7) 'Built-upon area' means that portion of a project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. 'Built-upon area' does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

"(8) 'Development' means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

"(9) 'Division' means the Division of Water Quality in the Department.

"(10) 'Planning jurisdiction' means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.

"(11) 'Public entity' means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.

"(12) 'Redevelopment' means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

"(13) 'Regulated entity' means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).

"(14) 'Sensitive receiving waters' means any of the following:

"a. Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 2B.0101 (Procedures for Assignment of Water Quality Standards — General Procedures).

"b. Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.

"c. Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 2B.0101 (Procedures for Assignment of Water Quality Standards — General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.

"(15) 'Shellfish resource waters' means Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a State-certified laboratory.

"(16) 'Significant contributor of pollutants' means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 2B.0211 through 15A NCAC 2B.0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B.0300, et seq. (Assignment of Stream Classifications).

"(17) 'Total maximum daily load (TMDL) implementation plan' means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

"3. Program Implementation. — The Commission shall implement the federal Phase II stormwater management requirements set out in 40 Code of Federal Regulations §§ 122.21, 122.26, and 122.28 through 122.37 (1 July 2003 Edition).

"4(a) Development in Unincorporated Areas of Counties. —

"(a) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Section 9 of this act beginning 1 July 2007 if the development is located in:

"(1) An area that is designated as an urbanized area under the most recent federal decennial census.

"(2) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:

"a. One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

"b. Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.

"c. Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

"(3) An area delineated pursuant to subsection (b) of this section.

"(4) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in subdivision (2) of subsection (a) of this section; (iii) the area delineated pursuant to subsection (b) of this section; (iv) the jurisdiction of a regulated entity designated pursuant to Section 5 of this act; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Section 6 of this act; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed seventy-five percent (75%) of the total geographic area of the county. For purposes of this subdivision, the stormwater programs administered by the Division are:

"a. Water Supply Watershed I (WS-I) — 15A NCAC 2B.0212.

"b. Water Supply Watershed II (WS-II) — 15A NCAC 2B.0214.

"c. Water Supply Watershed III (WS-III) — 15A NCAC 2B.0215.

"d. Water Supply Watershed IV (WS-IV) — 15A NCAC 2B.0216.

"e. High Quality Waters (HQW) — 15A NCAC 2H.1006.

"f. Outstanding Resource Waters (ORW) — 15A NCAC 2H.1007.

"g. The Coastal Stormwater Program — 15A NCAC 2H.1005.

"h. The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy — 15A NCAC 2B.0235.

"i. The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy — 15A NCAC 2B.0258.

"j. The Randleman Lake Water Supply Watershed Nutrient Management Strategy — 15A NCAC 2B.0251.

"k. Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications — 15A NCAC 2B.0223.

"(5) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.

"(b) Delineation Process. — The Commission shall delineate regulated coverage areas as provided in this subsection.

"(1) Schedule. — The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).

"(2) Potential candidate coverage areas. — A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to subdivisions (2) and (3) of Section 5 of this act that:

"a. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

"b. Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.

"c. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

"(3) Identification of candidate coverage areas. — The Commission shall identify an area within a potential candidate coverage area described in sub-subdivision b. of subdivision (2) of this subsection as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

"(4) Notice and comment on candidacy. — The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.

"(5) Delineation of regulated coverage areas. — After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:

"a. Adversely impacts water quality.

"b. Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B.0101 (Procedures for Assignment of Water Quality Standards — General Procedures) and the specific classification of the waters set out in 15A NCAC 2B.0300, et seq. (Assignment of Stream Classifications).

"(6) Notice of delineation. — The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.

"(c) Except as provided in this subsection and Section 10 of this act, the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Section 10 of this act.

"4(b) Development in Non-Phase II Incorporated Areas in Certain Counties. — Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in subdivisions (4) and (5) of subsection (a) of this section, that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Section 9 of this act beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Section 10 of this act.

"5. Designation of Regulated Entities. — A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this section.

"(1) Federal designation. — A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32 (1 July 2003 Edition).

"(2) State designation process. — The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in this subdivision.

"a. Designation schedule. — The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).

"b. Identification of candidate regulated entities. — The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:

"1. Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

"2. Serves a public entity that has not been designated pursuant to subdivision (1) of this section and that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.

"c. Notice and comment on candidacy. — The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.

"d. Designation of regulated entities. — After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:

"1. The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.

"2. The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years.

"3. The public entity has an actual population increase that exceeds fifteen percent (15%) of its previous population for the previous two years.

"4. The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.

"5. The municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B.0101 (Procedures for Assignment of Water Quality Standards — General Procedures) and the specific classification of the waters set out in 15A NCAC 2B.0300, et seq. (Assignment of Stream Classifications).

"e. Notice of designation. — The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.

"f. Application schedule. — A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination

System (NPDES) permit for stormwater management within 18 months of the date of notification.

"(3) Designation under a total maximum daily load (TMDL) implementation plan. — The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

"6. Petition Process. — A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:

"(1) Connected discharge petition. — An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).

"(2) Adverse impact petition. — Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

"a. Petition review. — The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows any of the following:

"1. The municipal separate storm sewer system (MS4) or the discharge discharges or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation.

"2. The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to receiving waters.

"3. The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313.

"b. Types of evidence for required showing. — Petitioners may make the required showing by providing to the Commission the following information:

"1. Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities.

"2. Scientific or technical literature that supports the sampling methods.

"3. Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.

"4. A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality.

"5. For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded.

"6. For stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.

"c. Water quality protection program offset. — If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B.0101 (Procedures for Assignment of Water Quality Standards — General Procedures) and the specific classification of the waters set out in 15A NCAC 2B.0300, et seq. (Assignment of Stream Classifications). The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to ensure compliance with a TMDL implementation plan.

"(3) Petition administration. — The Commission shall process petitions in the following manner:

"a. The Commission shall only accept petitions submitted on Department forms.

"b. A separate petition must be filed for each municipal separate storm sewer system (MS4) or discharge.

"c. The Commission shall evaluate only complete petitions. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information; and the Commission will determine, within 90 days of receipt of the additional information, whether the information completes the petition.

"d. The petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Commission to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge within 48 hours of each submittal.

"e. The Commission shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for at least 30 days from the date of posting.

"f. The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written request for a public hearing within the public comment period, and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.

"g. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.

"1. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, any petitions for that municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

"2. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge must present new information or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.

"h. The Commission shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

"7. Permit Standards. — To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an applicant shall, to the extent authorized by law, develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b)(1 July 2003 Edition). The evaluation of the post-construction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5)(1 July 2003 Edition) shall be conducted as provided in Section 9 of this act. Regulated entities may propose using any existing State or local program that relates to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.

"8. Exclusions from Post-Construction Practices. — The post-construction practices required by Section 9 of this act shall not apply to any of the following:

"(1) Development in an area where the requirements of Section 9 of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:

"a. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.

"b. A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).

"c. A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Section 9 of this act, if the Commission is responsible for implementation of the requirements of Section 9 of this act, that shows:

"1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.

"2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of Section 9 of this act to that phase of development would require a material change in that phase of the plan.

"d. A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Section 9 of this act.

"e. A vested right to the development pursuant to common law.

"(2) Redevelopment.

"9. Post-Construction Practices. —

"(a) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:

"(1) Water Supply Watershed I (WS-I) — 15A NCAC 2B.0212.

"(2) Water Supply Watershed II (WS-II) — 15A NCAC 2B.0214.

"(3) Water Supply Watershed III (WS-III) — 15A NCAC 2B.0215.

"(4) Water Supply Watershed IV (WS-IV) — 15A NCAC 2B.0216.

"(5) Freshwater High Quality Waters (HQW) — 15A NCAC 2H.1006.

"(6) Freshwater Outstanding Resource Waters (ORW) — 15A NCAC 2H.1007.

"(7) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy — 15A NCAC 2B.0235.

"(8) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy — 15A NCAC 2B.0258.

"(9) The Randleman Lake Water Supply Watershed Nutrient Management Strategy — 15A NCAC 2B.0251.

"(b) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for best management practices (BMPs), incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (July 1, 2003, Edition).

"(c) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. The stormwater controls shall be appropriate to the project's level of density as follows:

"(1) Post-construction model practices for low-density projects. — A project that is located within one-half mile of and draining to Shellfish Resource Waters is a low-density project if it contains no more than twelve percent "(12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a low-density project if it contains no more than twenty-four percent (24%) built-upon area or no more than two dwelling units per acre. Low-density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

"(2) Post-construction model practices for high-density projects. — A project that is located within one-half mile of and draining to Shellfish Resource Waters is a high-density project if it contains more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a high-density project if it contains more than twenty-four percent (24%) built-upon area or more than two dwelling units per acre. High-density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain unless the project is in a county that is subject to the Coastal Area Management Act of 1974, in which case the project must use structural stormwater management systems that will control and treat runoff from the first one and one-half inches of rain. In addition, projects that are located within one-half mile and draining to Shellfish Resource Waters must control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm. The structural stormwater management system must also meet the following design standards:

"a. Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.

"b. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.

"c. Remove an eighty-five percent (85%) average annual amount of Total Suspended Solids.

"d. Meet the General Engineering Design Criteria set out in 15A NCAC 02H.1008(c).

"e. Wet detention ponds designed in accordance with the requirements of subsection (h) of this section may be used for projects draining to Class SA waters.

"(d) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of this section, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B.0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with subsection (a) of Section 11 of this act.

"(e) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.

"(f) Permittees, delegated programs, and regulated entities must impose or require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.

"(g) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMPs required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.

"(h) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:

"(1) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.

"(2) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.

"(3) Prohibit new points of stormwater discharge to Class SA waters and prohibit both increases in the volume of stormwater flow through conveyances and increases in capacity of conveyances in existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. Diffuse flow of stormwater at a nonerosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

"(i) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:

"(1) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.

"(2) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.

"(j) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:

"(1) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B.0200.

"(2) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.

"(k) For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

"(l) Nothing in this section shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.

"10. Delegation. — A public entity that does not administer a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area under Section 4 of this act may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c). An ordinance or regulation adopted by a public entity shall at least meet and may exceed the minimum requirements of Section 9 of this act. Two or more public entities are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolution, memorandum of agreement, or other document that establishes any joint program must be duly recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution must be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of Section 9 of this act. If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to resume administration and enforcement of the program.

"11(a) Exceptions. — The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

"(1) An exception may be granted if the application meets all of the following criteria:

"a. Unnecessary hardships would result from strict application of the act.

"b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

"c. The hardships did not result from actions taken by the petitioner.

"d. The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.

"(2) Notwithstanding subdivision (1) of this section, exceptions shall be granted in any of the following instances:

"a. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

"b. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

"c. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

"(3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.

"(4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.

"(5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

"11(b) Exemption. — A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

"11(c) Waiver. — The Department may waive the Phase II National Pollutant Discharge Elimination System (NPDES) permit requirement pursuant to 40 Code of Federal Regulations §§ 122.32(d) or (e) (July 1, 2003, Edition).

"12. Implementation Schedule. — The requirements of this act shall be implemented as follows:

"(1) A regulated entity must apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Sections 4, 5, or 6 of this act.

"(2) Public education and outreach minimum measures shall be implemented no later than 12 months from date of permit issuance.

"(3) A regulated entity must implement its post-construction program no later than 24 months from the date the permit is issued.

"(4) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.

"13. Federal and State Projects. — The Commission shall have jurisdiction, to the exclusion of local governments, to issue a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular project. If a federal or State agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for management that applies to the particular project, then the project is subject to the stormwater management requirements of this act as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this act."

Session Laws 2006-246, ss. 14 and 15, effective retroactively to July 1, 2006, provide: "14. General Permit. — The Commission shall develop and issue a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) (July 1, 2003, Edition) shall require a permittee to meet the standards set out in Section 9 of this act but shall not impose any requirement on the permittee that exceeds the standards set out in Section 9 of this act. After the Commission has issued a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit may submit a notice of intent to be covered under the general permit to the Commission. The Commission shall treat an application for a permit as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this section.

"15. Additional Rule Making. — The Commission may adopt rules to replace the rules that are disapproved as provided in subsection (a) of Section 1 of this act. If the Commission adopts rules pursuant to this section, notwithstanding G.S. 150B-19(4), the rules shall be substantively identical to the provisions of Sections 2 through 13 of this act. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2)."

Session Laws 2006-246, s. 18, effective retroactively to July 1, 2006, reads: "Construction of Act. —

"(1) Except as specifically provided in Section 15 of this act, nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Environmental Management Commission or any unit of local government.

"(2) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3 (July 1, 2003, Edition), including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this act.

"(3) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.

"(4) The definitions of 'development' and 'redevelopment' set out in this act do not alter or amend the definition of 'redevelopment' set out in G.S. 113A-103 and do not apply to the Coastal Area Management Act of 1974, Article 7 of Chapter 113A of the General Statutes.

"(5) As used in Section 9 of this act, the phrase 'common plan of development or sale' shall be interpreted and implemented in a manner consistent with the memorandum referenced as 'Guidance Interpreting Phase II Stormwater Requirements' from the Director of the Division of Water Quality of the Department of Environment and Natural Resources to Interested Parties dated 24 July 2006."

Effect of Amendments. —

Session Laws 2006-246, s. 16(b), effective retroactively to July 1, 2006, added subsection (c1).

§ 143-214.20. Riparian Buffer Protection Program: Alternatives to maintaining riparian buffers; compensatory mitigation fees.

Editor's Note. —

Session Laws 2006-215, ss. 1 to 4, as amended by Session Laws 2006-218, s. 1, and as amended by Session Laws 2006-255, s. 5.3, effective August 1, 2006, and expiring September 1, 2007, provide: "1. Notwithstanding the per pound factors for nutrient offset payments established in 15A NCAC 2B.0240, as adopted by the Environmental Management Commission on 12 January 2006, the per pound factors for nutrient offset payments are established as follows:

"(1) Eleven dollars ($11.00) per pound of nitrogen, calculated inaccordance with the method used as of 1 January 2006, fordetermining pounds of nitrogen per acre.

"(2) Eleven dollars ($11.00) per tenth of a pound of phosphorous.

"1.1 Notwithstanding 15A NCAC 2B.0240 and Section 1 of this act, the Department of Environment and Natural Resources shall not be required to accept a nutrient offset payment for phosphorous as a means of fulfilling any requirement of the nutrient sensitive waters management strategy for the Tar-Pamlico River Basin if the Department finds that the payment is not sufficient to cover the full costs of nutrient reduction measures needed to comply with the nutrient sensitive waters management strategy. If the Department declines to accept a nutrient offset payment for phosphorous, the Department shall provide an estimate of the full cost of the nutrient reduction measures required for compliance with the nutrient sensitive waters management strategy. The Department may negotiate and enter into contracts to provide nutrient reduction measures needed to fulfill any requirement of the nutrient sensitive waters management strategy for phosphorous for the Tar-Pamlico River Basin based on the full cost of providing the nutrient reduction measures.

"2. Study. — The Environmental Review Commission, with the assistance of the Division of Water Quality of the Department of Environment and Natural Resources, shall study issues related to the nutrient offset payment program. The Commission shall specifically study the costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen; whether nutrient offset payments should be authorized for additional nutrients, including phosphorus; and whether the nutrient offset program should be expanded to other areas of the State.

"2.1. A donation of real property or of an interest in real property to the Department of Environment and Natural Resources, another State agency, a unit of local government, or a private nonprofit conservation organization under G.S. 143-214.20 shall be limited to property that is located in the same river basin as the riparian buffer that is lost but shall not be limited to a donation of property located on the same stream as the riparian buffer that is lost.

"3. Report. — The Environmental Review Commission shall report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

"4. The Division of Water Quality of the Department of Environment and Natural Resources must refund any fee paid in excess of the amount established under this act."

§ 143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.

Editor's Note. —

Session Laws 2006-215, ss. 1 to 4, as amended by Session Laws 2006-218, s. 1, and as amended by Session Laws 2006-255, s. 5.3, effective August 1, 2006, and expiring September 1, 2007, provide: "1. Notwithstanding the per pound factors for nutrient offset payments established in 15A NCAC 2B.0240, as adopted by the Environmental Management Commission on 12 January 2006, the per pound factors for nutrient offset payments are established as follows:

"(1) Eleven dollars ($11.00) per pound of nitrogen, calculated inaccordance with the method used as of 1 January 2006, fordetermining pounds of nitrogen per acre.

"(2) Eleven dollars ($11.00) per tenth of a pound of phosphorous.

"1.1 Notwithstanding 15A NCAC 2B.0240 and Section 1 of this act, the Department of Environment and Natural Resources shall not be required to accept a nutrient offset payment for phosphorous as a means of fulfilling any requirement of the nutrient sensitive waters management strategy for the Tar-Pamlico River Basin if the Department finds that the payment is not sufficient to cover the full costs of nutrient reduction measures needed to comply with the nutrient sensitive waters management strategy. If the Department declines to accept a nutrient offset payment for phosphorous, the Department shall provide an estimate of the full cost of the nutrient reduction measures required for compliance with the nutrient sensitive waters management strategy. The Department may negotiate and enter into contracts to provide nutrient reduction measures needed to fulfill any requirement of the nutrient sensitive waters management strategy for phosphorous for the Tar-Pamlico River Basin based on the full cost of providing the nutrient reduction measures.

"2. Study. — The Environmental Review Commission, with the assistance of the Division of Water Quality of the Department of Environment and Natural Resources, shall study issues related to the nutrient offset payment program. The Commission shall specifically study the costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen; whether nutrient offset payments should be authorized for additional nutrients, including phosphorus; and whether the nutrient offset program should be expanded to other areas of the State.

"2.1. A donation of real property or of an interest in real property to the Department of

Environment and Natural Resources, another State agency, a unit of local government, or a private nonprofit conservation organization under G.S. 143-214.20 shall be limited to property that is located in the same river basin as the riparian buffer that is lost but shall not be limited to a donation of property located on the same stream as the riparian buffer that is lost.

"3. Report. — The Environmental Review Commission shall report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

"4. The Division of Water Quality of the Department of Environment and Natural Resources must refund any fee paid in excess of the amount established under this act."

§ 143-215. Effluent standards or limitations.

Nutrient management strategy. — Session Laws 2005-190, s. 3(c), as amended by Session Laws 2006-259, s. 31(a), effective July 1, 2005, provides: "The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July 2009. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy."

Implementation; rulemaking. — Session Laws 2005-190, s. 3(e), as amended by Session Laws 2006-259, s. 31(b), effective July 15, 2005, provides: "The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July 2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective."

Other drinking water supply reservoirs. — Session Laws 2005-190, s. 4, as amended by Session Laws 2006-259, s. 31(c), effective July 15, 2005, provides: "The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

§ 143-215.1. Control of sources of water pollution; permits required.

(a) Activities for Which Permits Required. — No person shall do any of the following things or carry out any of the following activities unless that person has received a permit from the Commission and has complied with all conditions set forth in the permit:

(1) Make any outlets into the waters of the State.

(2) Construct or operate any sewer system, treatment works, or disposal system within the State.

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State.

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent that would result in any violation of the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters to the extent of violating any applicable standard.

(5) Change the nature of the waste discharged through any disposal system in any way that would exceed the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters in relation to any applicable standards.

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article.

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in that facility.

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facility.

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto.

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(11) Cause or permit discharges regulated under G.S. 143-214.7 that result in water pollution.

(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article.

(a1) In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

(a2) No permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency that administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that any outlet for the disposal of waste is, or would be, sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

(a3) If the Commission denies an application for a permit, the Commission shall state in writing the reason for the denial and shall also state the

Commission's estimate of the changes in the applicant's proposed activities or plans that would be required in order that the applicant may obtain a permit.

(a4) The Department shall regulate wastewater systems under rules adopted by the Commission for Health Services pursuant to Article 11 of Chapter 130A of the General Statutes except as otherwise provided in this subsection. No permit shall be required under this section for a wastewater system regulated under Article 11 of Chapter 130A of the General Statutes. The following wastewater systems shall be regulated by the Department under rules adopted by the Commission:

(1) Wastewater systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(b) Commission's Power as to Permits. —

(1) The Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources. No permit shall be denied and no condition shall be attached to the permit, except when the Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.

(2) The Commission shall also act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity. All permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.

(3) General permits may be issued under rules adopted pursuant to Chapter 150B of the General Statutes. Such rules may provide that minor activities may occur under a general permit issued in accordance with conditions set out in such rules. All persons covered under general permits shall be subject to all enforcement procedures and remedies applicable under this Article.

(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990, Edition).

4. For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more

individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:
    1. The environmental impact of the activities;
    2. How often the activities are carried out;
    3. The need for individual permit oversight; and
    4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:
    1. Performance conditions may be established by rule; and
    2. Individual or general permits are not required.

(5) The Commission shall not issue a permit for a new municipal or domestic wastewater treatment works that would discharge to the surface waters of the State or for the expansion of an existing municipal or domestic wastewater treatment works that would discharge to the surface waters of the State unless the applicant for the permit demonstrates to the satisfaction of the Commission that:

a. The applicant has prepared and considered an engineering, environmental, and fiscal analysis of alternatives to the proposed facility.

b. The applicant is in compliance with the applicable requirements of the systemwide municipal and domestic wastewater collection systems permit program adopted by the Commission.

(b1) Repealed by Session Laws 1991, c. 156, s. 1.

(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. —

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the

Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for hearing, and if the Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in hearings. If the hearing is not conducted by the Commission, detailed minutes of the hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An

applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision.

(c1) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission shall not discharge more than an average annual mass load of total nitrogen than would result from a discharge of the permitted flow, determined at the time the Commission makes a finding that those waters are experiencing or are subject to excessive growth of microscopic or macroscopic vegetation, having a total nitrogen concentration of five and one-half milligrams of nitrogen per liter (5.5 mg/l). The total nitrogen concentration of 5.5 mg/l for nutrient sensitive waters required by this subsection applies only to:

(1) Facilities that were placed into operation prior to 1 July 1997 or for which an authorization to construct was issued prior to 1 July 1997 and that have a design capacity to discharge 500,000 gallons per day or more.

(2) Facilities for which an authorization to construct is issued on or after 1 July 1997.

(c2) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission where phosphorus is designated by the Commission as a nutrient of concern shall not discharge more than an average annual mass load of total phosphorus than would result from a discharge of the permitted flow, determined at the time the Commission makes a finding that those waters are experiencing or are subject to excessive growth of microscopic or macroscopic vegetation, having a total phosphorus concentration of two milligrams of phosphorus per liter (2.0 mg/l). The total phosphorus concentration of 2.0 mg/l for nutrient sensitive waters required by this subsection applies only to:

(1) Facilities that were placed into operation prior to 1 July 1997 or for which an authorization to construct was issued prior to 1 July 1997 and that have a design capacity to discharge 500,000 gallons per day or more.

(2) Facilities for which an authorization to construct is issued on or after 1 July 1997.

(c3) A person to whom subsection (c1) or (c2) of this section applies may meet the limits established under those subsections either individually or on the basis of a cooperative agreement with other persons who hold individual wastewater permits if the cooperative agreement is approved by the Commission. A person to whom subsection (c1) or (c2) of this section applies whose agreement to accept wastewater from another wastewater treatment facility that discharges into the same water body and that results in the elimination of the discharge from that wastewater treatment facility shall be allowed to increase the average annual mass load of total nitrogen and total phosphorus that person discharges by the average annual mass load of total nitrogen and total phosphorus of the wastewater treatment facility that is eliminated. If the wastewater treatment facility that is eliminated has a permitted flow of less than 500,000 gallons per day, the average annual mass load of total nitrogen or phosphorus shall be calculated from the most recent available data. A person to whom this subsection applies shall comply with nitrogen and phosphorus discharge monitoring requirements established by the Commission. This average annual load of nitrogen or phosphorus shall be assigned to the wastewater discharge allocation of the wastewater treatment facility that accepts the wastewater.

(c4) A person to whom subsection (c1) of this section applies may request the Commission to approve a total nitrogen concentration greater than that set out in subsection (c1) of this section at a decreased permitted flow so long as the average annual mass load of total nitrogen is equal to or is less than that required under subsection (c1) of this section. A person to whom subsection (c2) of this section applies may request the Commission to approve a total phosphorus concentration greater than that set out in subsection (c2) of this section at a decreased permitted flow so long as the average annual mass load of total phosphorus is equal to or is less than that required under subsection (c2) of this section. If, after any 12-month period following approval of a greater concentration at a decreased permitted flow, the Commission finds that the greater concentration at a decreased permitted flow does not result in an average annual mass load of total nitrogen or total phosphorus equal to or less than those that would be achieved under subsections (c1) and (c2) of this section, the Commission shall rescind its approval of the greater concentration at a decreased permitted flow and the requirements of subsections (c1) and (c2) of this section shall apply.

(c5) For surface waters to which the limits set out in subsection (c1) or (c2) of this section apply and for which a calibrated nutrient response model that meets the requirements of this subsection has been approved by the Commission, mass load limits for total nitrogen or total phosphorus shall be based on the results of the nutrient response model. A calibrated nutrient response model shall be developed and maintained with current data, be capable of predicting the impact of nitrogen or phosphorus in the surface waters, and incorporated into nutrient management plans by the Commission. The maximum mass load for total nitrogen or total phosphorus established by the Commission shall be substantiated by the model and may require individual discharges to be limited at concentrations that are different than those set out in subsection (c1) or (c2) of this section. A calibrated nutrient response model shall be developed by the Department in conjunction with the affected parties and is subject to approval by the Commission.

(c6) For surface waters that the Commission classifies as nutrient sensitive waters (NSW) on or after 1 July 1997, the Commission shall establish a date by which facilities that were placed into operation prior to the date on which the surface waters are classified NSW or for which an authorization to construct was issued prior to the date on which the surface waters are classified NSW must comply with subsections (c1) and (c2) of this section. The Commission shall establish the compliance date at the time of the classification. The Commission shall not establish a compliance date that is more than five years after the date of the classification. The Commission may extend the compliance date as provided in G.S. 143-215.1B. A request to extend a compliance date shall be submitted within 120 days of the date on which the Commission reclassifies a surface water body as NSW.

(d) Applications and Permits for Sewer Systems, Sewer System Extensions and Pretreatment Facilities, Land Application of Waste, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State. —

(1) All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems, and for land application of waste, or treatment works which do not

discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved. Permits and renewals issued in approving such facilities pursuant to this subsection shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission. Local governmental units to whom pretreatment program authority has been delegated shall establish, maintain, and provide to the public, upon written request, a list of pretreatment applications received.

(2) An applicant for a permit to dispose of petroleum contaminated soil by land application shall give written notice that he intends to apply for such a permit to each city and county government having jurisdiction over any part of the land on which disposal is proposed to occur. The Commission shall not accept such a permit application unless it is accompanied by a copy of the notice and evidence that the notice was sent to each such government by certified mail, return receipt requested. The Commission may consider, in determining whether to issue the permit, the comments submitted by local governments.

(d1) Each applicant under subsections (c) or (d) for a permit (or the renewal thereof) for the operation of a treatment works for a private multi-family or single family residential development, in which the owners of individual residential units are required to organize as a lawfully constituted and incorporated homeowners' association of a subdivision, condominium, planned unit development, or townhouse complex, shall be required to enter into an operational agreement with the Commission as a condition of any such permit granted. The agreement shall address, as necessary, construction, operation, maintenance, assurance of financial solvency, transfers of ownership and abandonment of the plant, systems, or works, and shall be modified as necessary to reflect any changed condition at the treatment plant or in the development. Where the Commission finds appropriate, it may require any other private residential subdivision, condominium, planned unit development or townhouse complex which is served by a private treatment works and does not have a lawfully constituted and incorporated homeowners' association, and for which an applicant applies for a permit or the renewal thereof under subsections (c) or (d), to incorporate as a lawfully constituted homeowners' association, and after such incorporation, to enter into an operational agreement with the Commission and the applicant as a condition of any permit granted under subsections (c) or (d). The local government unit or units having jurisdiction over the development shall receive notice of the application within an established comment period and prior to final decision.

(e) Administrative Review. — A permit applicant or permittee who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision is final and is not subject to review.

(f) Local Permit Programs for Sewer Extension and Reclaimed Water Utilization. — Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Commission. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where sewer service or a reclaimed water utilization system is already being provided by the municipality to the permit applicant or connection to the municipal sewer system or a reclaimed water utilization system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service or a reclaimed water utilization system is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of a program and statement submitted by any local government, commission, authority, or board the Commission shall certify any local program that does all of the following:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Part and the rules implementing this Part.

(2) Provides that the Department receives notice and a copy of each application for a permit and that it receives copies of approved permits and plans upon request by the Commission.

(3) Provides that plans and specifications for all construction, extensions, alterations, and changes be prepared by or under the direct supervision of an engineer licensed to practice in this State.

(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process.

(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program.

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer or a reclaimed water utilization system.

(8) Is approved by the Commission as adequate to meet the requirements of this Part and the rules implementing this Part.

(f1) The Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A denial, suspension, or revocation of a certification of a local program shall be made only after notice and a public hearing. If the failure of a local program to carry out this subsection creates an imminent hazard, the Commission may summarily revoke the certification of the local program. Chapter 150B of the General Statutes does not apply to proceedings under this subsection.

(f2) Notwithstanding any other provision of subsections (f) and (f1) of this section, if the Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article.

(g) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the discharge of waste and pollutants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification.

(h) Each applicant for a new permit or the modification of an existing permit issued under subsection (c) of this section shall include with the application: (i) the extent to which the new or modified facility is constructed in whole or in part with funds provided or administered by the State or a unit of local government, (ii) the impact of the facility on water quality, and (iii) whether there are cost-effective alternative technologies that will achieve greater protection of water quality. The Commission shall prepare a quarterly summary and analysis of the information provided by applicants pursuant to this subsection. The Commission shall submit the summary and analysis required by this subsection to the Environmental Review Commission (ERC) as a part of each quarterly report that the Commission is required to make to the ERC under G.S. 143B-282(b). (1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 6; 1973, c. 476, s. 128; c. 821, s. 5; c. 1262, s. 23; 1975, c. 19, s. 51; c. 583, ss. 2-4; c. 655, ss. 1, 2; 1977, c. 771, s. 4; 1979, c. 633, s. 5; 1985, c. 446, s. 1; c. 697, s. 2; 1985 (Reg. Sess., 1986), c. 1023, ss. 1-5; 1987, c. 461, s. 1; c. 734, s. 1; c. 827, ss. 154, 159; 1989, c. 51, s. 2; c. 168, s. 29; c. 453, ss. 1, 2; c. 494, s. 1; c. 727, ss. 160, 161; 1989 (Reg. Sess., 1990), c. 1004, s. 17; c. 1024, s. 33; c. 1037, s. 1; 1991, c. 156, s. 1; c. 498, s. 1; 1991 (Reg. Sess., 1992), c. 944, s. 12; 1995 (Reg. Sess., 1996), c. 626, s. 2; 1997-458, ss. 6.1, 9.1, 11.2; 1997-496, s. 3; 1998-212, s. 14.9H(b), (d); 1999-329, s. 10.1; 2004-195, s. 1.5; 2006-250, s. 5.)

Effect of Amendments. —
Session Laws 2006-250, s. 5, effective September 1, 2006, redesignated the previously existing provisions of subdivision (f) as present subdivisions (f), (f1) and (f2); in subsection (f), added "and Reclaimed Water Utilization" in the subsection catchline, inserted "or a reclaimed water utilization system" three times in the second sentence of the introductory paragraph, and once in subdivision (f)(7), and added "does all of the following" at the end of the introductory paragraph; and substituted "subsections (f) and (f1) of this section" for "this subsection" near the beginning of subsection (f2).

CASE NOTES

Cited in Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156, 2005 N.C. App. LEXIS 906 (2005).

§ 143-215.3. General powers of Commission and Department; auxiliary powers.

Editor's Note. —
Session Laws 2006-255, s. 5.4, provides: "The provisions of 15A NCAC 2D.0530(b)(1)(A)(iv) as adopted by the Environmental Management Commission on 10 February 2005 and as approved by the Rules Review Commission on 21 April 2005, do not apply to any application for an air quality permit that is submitted and determined to be administratively complete by the Department of Environment and Natural Resources on or before 1 August 2006. An air quality permit issued pursuant to an application described in this section shall both:

"(1) Include a requirement that the permittee will install advanced control technology designed to remove ninety-nine percent (99%) of any pollutants at each electric generating unit to which 15A NCAC 2D.0530(b)(1)(A)(iv) would otherwise apply and that the permittee will operate the advanced control technology at any time that electricity is being produced by the electric generating unit other than during startup of the unit.

"(2) State that the actual emissions of sulfur dioxide (SO2) shall be no greater than 0.15

pound per million British Thermal Units (BTUs) as measured on a rolling 30-day average."

§ 143-215.3D. Fee schedule for water quality permits.

(a) Annual fees for discharge and nondischarge permits under G.S. 143-215.1. —

(1) Major Individual NPDES Permits. — The annual fee for an individual permit for a point source discharge of 1,000,000 or more gallons per day, a publicly owned treatment works (POTW) that administers a POTW pretreatment program, as defined in 40 Code of Federal Regulations § 403.3 (1 July 1996 Edition), or an industrial waste treatment works that has a high toxic pollutant potential shall be two thousand eight hundred sixty-five dollars ($2,865).

(2) Minor Individual NPDES Permits. — The annual fee for an individual permit for a point source discharge other than a point source discharge to which subdivision (1) of this subsection applies shall be seven hundred fifteen dollars ($715.00).

(3) Single-Family Residence. — The annual fee for a certificate of coverage under a general permit for a point source discharge or an individual nondischarge permit from a single-family residence shall be fifty dollars ($50.00).

(4) Stormwater and Wastewater Discharge General Permits. — The annual fee for a certificate of coverage under a general permit for a point source discharge of stormwater or wastewater shall be eighty dollars ($80.00).

(5) Recycle Systems. — The annual fee for an individual permit for a recycle system nondischarge permit shall be three hundred dollars ($300.00).

(6) Major Nondischarge Permits. — The annual fee for an individual permit for a nondischarge of 10,000 or more gallons per day or requiring 300 or more acres of land shall be one thousand ninety dollars ($1,090).

(7) Minor Nondischarge Permits. — The annual fee for an individual permit for a nondischarge of less than 10,000 gallons per day or requiring less than 300 acres of land shall be six hundred seventy-five dollars ($675.00).

(8) Animal Waste Management Systems. — The annual fee for animal waste management systems shall be as set out in G.S. 143-215.10G.

(b) Application fee for new discharge and nondischarge permits. — An application for a new permit of the type set out in subsection (a) of this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Application and annual fees for consent special orders. —

(1) Major Consent Special Orders. — If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (1) or (6) of subsection (a) of this section, the initial project fee shall be four hundred dollars ($400.00) and the annual fee shall be five hundred dollars ($500.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(2) Minor Consent Special Orders. — If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (2) or (7) of subsection (a) of this section,

the initial project fee shall be four hundred dollars ($400.00) and the annual fee shall be two hundred fifty dollars ($250.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(d) Fee for major permit modifications. — An application for a major modification of a permit of the type set out in subsection (a) of this section shall be accompanied by an application fee equal to thirty percent (30%) of the annual fee applicable to that permit. A major modification of a permit is any modification that would allow an increase in the volume or pollutant load of the discharge or nondischarge or that would result in a significant relocation of the point of discharge, as determined by the Commission. This fee shall be in addition to the fees due under subsections (a) and (c) of this section. If the application is denied, the application fee shall not be refunded.

(e) Other fees under this Article. —

(1) Sewer System Extension Permits. — The application fee for a permit for the construction of a new sewer system or for the extension of an existing sewer system shall be four hundred dollars ($400.00).

(2) State Stormwater Permits. — The application fee for a permit regulating stormwater runoff under G.S. 143-214.7 and G.S. 143-215.1 shall be four hundred twenty dollars ($420.00).

(3) Major Water Quality Certifications. — The fee for a water quality certification involving one acre or more of wetland fill or 150 feet or more of stream impact shall be four hundred seventy-five dollars ($475.00).

(4) Minor Water Quality Certifications. — The fee for a water quality certification involving less than one acre of wetland fill or less than 150 feet of stream impact shall be two hundred dollars ($200.00).

(5) Permit for Land Application of Petroleum Contaminated Soils. — The fee for a permit to apply petroleum contaminated soil to land shall be four hundred dollars ($400.00).

(6) Fee Nonrefundable. — If an application for a permit or a certification described in this subsection is denied, the application or certification fee shall not be refunded.

(7) Limit Water Quality Certification Fee Required for CAMA Permit. — An applicant for a permit under Article 7 of Chapter 113A of the General Statutes for which a water quality certification is required shall pay a fee established by the Secretary. The Secretary shall not establish a fee that exceeds the greater of the fee for a permit under Article 7 of Chapter 113A of the General Statutes or the fee for a water quality certification under subdivision (3) or (4) of this subsection.

(f) Local Government Fee Authority Not Impaired. — This section shall not be construed to limit any authority that a unit of local government may have pursuant to any other provision of law to assess or collect a fee for the review of an application for a permit, the review of a mitigation plan, or the inspection of a site or a facility under any local program that is approved by the Commission under this Article. (1998-212, s. 29A.11(a); 1999-413, s. 6; 2006-250, s. 4.)

Effect of Amendments. — Session Laws 2006-250, s. 4, effective September 1, 2006, added subsection (f).

§ 143-215.6A. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than twenty-five thousand dollars ($25,000) may be assessed by the Secretary against any person who:

(1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.

(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.

(5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.

(6) Violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k).

(7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.

(8) Violates the offenses set out in G.S. 143-215.6B.

(9) Is required, but fails, to apply for or to secure a certificate required by G.S. 143-215.22I, or who violates or fails to act in accordance with the terms, conditions, or requirements of the certificate.

(10) Violates subsections (c1) through (c5) of G.S. 143-215.1 or a rule adopted pursuant to subsections (c1) through (c5) of G.S. 143-215.1.

(11) Violates or fails to act in accordance with G.S. 143-214.7(d1).

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed twenty-five thousand dollars ($25,000) per day for so long as the violation continues, unless otherwise stipulated.

(b1) The Secretary may assess a civil penalty of more than ten thousand dollars ($10,000) or, in the case of a continuing violation, more than ten thousand dollars ($10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the five years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars ($10,000) or, in the case of a continuing violation, more than ten thousand dollars ($10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars ($10,000) per month may be assessed by the Commission against any local government that fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(h) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 14.

(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) As used in this subsection, “municipality” refers to any unit of local government which operates a wastewater treatment plant. As used in this subsection, “unit of local government” has the same meaning as in G.S. 130A-290. The provisions of this subsection shall apply whenever a municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of 10 million gallons per day or more into any of the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is subject to a court order which specifies (i) a schedule of activities with respect to the treatment of wastewater by the municipality; (ii) deadlines for the completion of scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A municipality as specified herein that violates any provision of such order for which a penalty is stipulated shall pay the full amount of such penalty as provided in the order unless such penalty is modified, remitted, or reduced by the court.

(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs pursuant to G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section.

(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government within 30 days of the date the notice of assessment is received. If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13; 1987, c. 271; c. 827, ss. 154, 164; 1989, c. 426, s. 4; 1989 (Reg. Sess., 1990), c. 951, s. 1; c. 1036, s. 3; c. 1045, s. 1; c. 1075, s. 6; 1991, c. 579, s. 2; c. 725, s. 3; 1993, c. 348, s. 2; 1995 (Reg. Sess., 1996), c. 743, s. 14; 1997-458, s. 6.2; 1998-215, s. 63; 1999-329, ss. 5.1, 5.3, 5.5, 5.7; 2004-124, s. 6.29(b); 2006-250, s. 6.)

Effect of Amendments. —

Session Laws 2006-250, s. 6, effective September 1, 2006, in the first sentence of subsection (j), inserted "by the Commission" following "certified and approved," deleted "by the Commission" following "pretreatment programs," and inserted "stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23."

§ 143-215.10B. Definitions.

Editor's Note. — Session Laws 2004-124, s. 12.7C, as amended by Session Laws 2006-38, s. 1, provides: "Before 1 September 2007, the requirements and qualifications for animal waste management systems technical specialists shall not be changed and the scope of the work that animal waste management systems technical specialists are authorized to perform shall not be decreased. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143-215.10B."

Part 4. Federal Water Resources Development Projects.

§ 143-215.40. Resolutions and ordinances assuring local cooperation.

(a) **(Effective until July 1, 2007)** The boards of commissioners of the several counties, in behalf of their respective counties, the governing bodies of the several municipalities, in behalf of their respective municipalities, the governing bodies of any other local government units, in behalf of their units, and the North Carolina Environmental Management Commission, in behalf of the State of North Carolina, subject to the approval of the Governor, are hereby authorized to adopt such resolutions or ordinances as may be required giving assurances to any appropriate agency of the United States government for the

G.S. 143-215.40(a) is set out twice. See note.

fulfillment of the required items of local cooperation as expressed in acts of Congress or congressional documents, as conditions precedent to the accomplishment of river and harbor, flood control or other such civil works projects, when it shall appear, and is determined by such board or governing body that any such project will accrue to the general or special benefit of such county or municipality or to a region of the State. In each case where the subject of such local cooperation requirements comes before a board of county commissioners or the governing body of any municipality or other local unit a copy of its final action, whether it be favorable or unfavorable, shall be sent to the Secretary of Environment and Natural Resources for the information of the Governor. Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission.

(a) **(Effective July 1, 2007)** The boards of commissioners of the several counties, in behalf of their respective counties, the governing bodies of the several municipalities, in behalf of their respective municipalities, the governing bodies of any other local government units, in behalf of their units, and the North Carolina Environmental Management Commission, in behalf of the State of North Carolina, subject to the approval of the Governor, are hereby authorized to adopt such resolutions or ordinances as may be required giving assurances to any appropriate agency of the United States government for the fulfillment of the required items of local cooperation as expressed in acts of Congress or congressional documents, as conditions precedent to the accomplishment of river and harbor, flood control or other such civil works projects, when it shall appear, and is determined by such board or governing body that any such project will accrue to the general or special benefit of such county or municipality or to a region of the State. In each case where the subject of such local cooperation requirements comes before a board of county commissioners or the governing body of any municipality or other local unit a copy of its final action, whether it be favorable or unfavorable, shall be sent to the Secretary of Environment and Natural Resources for the information of the Governor.

(b) Within the meaning of this Part, a "local government unit" means any local subdivision or unit of government or local public corporate entity (other than a county or municipality), including any manner of special district or public authority. (1969, cc. 724, 968; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1983, c. 717, s. 69; 1985 (Reg. Sess., 1986), c. 955, ss. 91, 92; 1989, c. 727, s. 218(108); 1997-443, s. 11A.119(a); 2006-203, s. 89.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2007. The second version of subsection (a) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 89, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last sentence in subsection (a) which read: "Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission."

Part 8. Grants for Water Resources Development Projects.

§ 143-215.73. (Effective July 1, 2007) Recommendation and disbursal of grants.

After review of grant applications, project funds shall be disbursed and

G.S. 143-215.73 is set out twice. See notes.

monitored by the Department. (1979, c. 1046, s. 1; 1983, c. 717, s. 70; 1985 (Reg. Sess., 1986), c. 955, s. 93; 1987, c. 827, s. 154; 2006-203, s. 90.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 90, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the second sentence which read: "After review, but before transfer of funds from the Department's reserve fund into accounts for specific projects, the Secretary may forward the applications to the Advisory Budget Commission for its review of the recommendations."

Part 8A. Water Resources Development Projects.

§ 143-215.73A. Water Resources Development Plan.

(a) Plan prepared. — Before 1 July in each calendar year, the Department of Environment and Natural Resources shall prepare a statewide plan for water resources development projects for a period of six years into the future. The plan shall be known as the Water Resources Development Plan. If the plan differs from the Water Resources Development Plan adopted for the preceding calendar year, the Department shall indicate the changes and the reasons for such changes. The Department shall submit the plan to the Director of the Budget for review.

(b) Projects listed. — The plan shall list the following water resources development projects based on their status as of 1 May of the year in which the plan is prepared:

(1) Projects approved by the Congress of the United States.
(2) Projects for which the Congress of the United States has appropriated funds.
(3) Projects for which grant applications have been submitted under Part 8 of Article 21 of Chapter 143 of the General Statutes.
(4) Projects for which grant applications have been submitted under Article 4 of Chapter 139 of the General Statutes.
(5) Projects planned as federal reservoir projects but for which no federal funds are scheduled and for which local governments are seeking State financial assistance.

(c) Project priorities and funding recommendations. — The Department shall assign a priority to each project within each of the five categories listed under subsection (b) of this section either by giving the project a number, with "1" assigned to the highest priority, or by recommending no funding. The Department shall state its reasons for recommending the funding, deferral, or elimination of a project. The Department shall determine the priority of a project based on the following criteria: local interest in the project, the cost of the project to the State, the benefit of the project to the State, and the environmental impact of the project.

(d) Project information. — For each project listed under subsection (b) of this section, the Water Resources Development Plan shall:

(1) Provide a brief description.
(2) If federal, list the estimated cost of each of the following phases that have not been completed as of 1 July, (i) feasibility study, (ii)

construction, (iii) operation and maintenance, and the amount of State funds required to match the federal funds needed.

(3) If State or local, list the estimated cost to complete the project and amount of State funds required under G.S. 143-215.71 or G.S. 139-54.

(4) Indicate the total cost to date and the State share of that cost.

(5) Indicate the status.

(6) Indicate the estimated completion date.

(e) **(Effective until July 1, 2007)** Distribution of the plan. — The Director of the Budget shall provide copies of the plan to the members of the Advisory Budget Commission when the Advisory Budget Commission meets to deliberate on the biennial budget or on the revised budget for the second year of the biennium. The Director of the Budget shall also provide copies of the plan to the General Assembly along with the recommended biennial budget and the recommended revised budget for the second year of the biennium.

(e) **(Effective July 1, 2007)** Distribution of the plan. — The Director of the Budget shall provide copies of the plan to the General Assembly along with the recommended biennial budget and the recommended revised budget for the second year of the biennium.

(f) Budget recommendations. — The Director of the Budget shall determine which projects, if any, will be included in the recommended biennial budget and in the recommended revised budget for the second year of the biennium. The budget document transmitted to the General Assembly shall identify the projects or types of projects recommended for funding. (1991, c. 181, s. 1; 1997-443, s. 11A.119(a); 2006-203, s. 91.)

Subsection (e) Set Out Twice. — The first version of subsection (e) set out above is effective until July 1, 2007. The second version of subsection (e) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 91, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (e), deleted the former first sentence, which read: "The Director of the Budget shall provide copies of the plan to the members of the Advisory Budget Commission when the Advisory Budget Commission meets to deliberate on the biennial budget or on the revised budget for the second year of the biennium"; and deleted "also" preceding "provide copies."

Part 11. Community Conservation Assistance Program.

§ 143-215.74M. Community Conservation Assistance Program.

(a) Program Established. — There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation Commission.

(b) Purposes. — The purpose of the Program shall be to reduce the input of nonpoint source pollution into the waters of the State. The Program shall be subject to the following requirements and limitations:

(1) Subject to subdivision (5) of this subsection, priority designations for inclusion in the Program for State funding shall be established by the Soil and Water Conservation Commission. The Soil and Water Conservation Commission shall allocate the cost share and technical assistance funds under the Program.

(2) Areas shall be included in the Program as the funds are appropriated and technical assistance becomes available from the local Soil and Water Conservation District.

(3) Funding may be provided to assist community conservation practices approved by the Soil and Water Conservation Commission.

(4) State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted applicant providing twenty-five percent (25%) of the cost, which may include in-kind support of the practice, with a maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

(5) Priority designation for inclusion in the Program for State funding shall be given to projects that improve water quality. To be eligible for cost-share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.

(6) Participation in the Program shall be voluntary.

(c) Availability of Funds. — State funds for the Program shall remain available until expended.

(d) Advisory Committee. — The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

(1) The Director of the Division of Soil and Water Conservation or the Director's designee, who shall serve as the Chair of the Advisory Committee.

(2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.

(3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.

(4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.

(6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.

(7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.

(8) The President of the North Carolina Conservation District Employees Association or the President's designee.

(9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.

(10) The Director of the Division of Water Quality or the Director's designee.

(11) The Director of the Division of Forest Resources or the Director's designee.

(12) The Director of the Division of Land Resources or the Director's designee.

(13) The Director of the Division of Coastal Management or the Director's designee.

(14) The Director of the Division of Water Resources or the Director's designee.

(15) The President of the Carolinas Land Improvement Contractors Association or the President's designee.

(e) Report. — The Soil and Water Conservation Commission shall report no later than 31 January of each year to the Environmental Review Commission and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality. (2006-78, s. 1.)

Cross References. — As to powers of districts and supervisors, see G.S. 139-8.

Editor's Note. — Session Laws 2006-78, s. 7, made this section effective July 10, 2006.

Session Laws 2006-78, s. 5, effective July 10, 2006, provides: "The Community Conservation Assistance Program Advisory Committee shall review the Program prior to expenditure of any funds from the Program. The Advisory Committee shall report on the findings of its Program review to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chairs of the Appropriations Committees of the Senate and the House of Representatives, the Director of the Fiscal Research Division of the Legislative Services Office, and the Environmental Review Commission no later than 31 March 2007."

Session Laws 2006-78, s. 6, effective July 10, 2006, provides: "The first report required pursuant to G.S. 143-215.74M(e), as enacted by Section 1 of this act, is due on or before 31 January 2008."

ARTICLE 21B.

Air Pollution Control.

§ 143-215.107. Air quality standards and classifications.

Editor's Note. —

Session Laws 2006-255, s. 5.4, provides: "The provisions of 15A NCAC 2D.0530(b)(1)(A)(iv) as adopted by the Environmental Management Commission on 10 February 2005 and as approved by the Rules Review Commission on 21 April 2005, do not apply to any application for an air quality permit that is submitted and determined to be administratively complete by the Department of Environment and Natural Resources on or before 1 August 2006. An air quality permit issued pursuant to an application described in this section shall both:

"(1) Include a requirement that the permittee will install advanced control technology designed to remove ninety-nine percent (99%) of any pollutants at each electric generating unit to which 15A NCAC 2D.0530(b)(1)(A)(iv) would otherwise apply and that the permittee will operate the advanced control technology at any time that electricity is being produced by the electric generating unit other than during startup of the unit.

"(2) State that the actual emissions of sulfur dioxide (SO2) shall be no greater than 0.15 pound per million British Thermal Units (BTUs) as measured on a rolling 30-day average."

CASE NOTES

Open Burning. — Where a contractor had nine open burning piles within 1,000 feet from a dwelling, the North Carolina Department of Environment and Natural Resources and the Environmental Management Commission did not exceed their discretion and authority under G.S. 143-211(c), 143-215.107(a)(1), (3), and 143-215.114A(a)(1) in interpreting each pile to be one violation. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005).

§ 143-215.107B. Statewide goals for reduction in emissions of oxides of nitrogen; report.

Editor's Note. —

Session Laws 2002-4, which enacted G.S. 143-215.107D and G.S. 62-133.6, in ss. 10-14, as amended by Session Laws 2006-79, s. 12, provide: "It is the intent of the General Assembly that the State use all available resources and means, including negotiation, participation in interstate compacts and multistate and interagency agreements, petitions pursuant to 42 U.S.C. § 7426, and litigation to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) comparable to those required by G.S. 143-215.107D, as enacted by Section 1 of this act, on a comparable schedule. The State shall give particular attention to those states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage.

"The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) beyond those required by G.S. 143-215.107D, as enacted by Section 1 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) taken by states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September 2007.

"The General Assembly anticipates that measures implemented to achieve the reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required by G.S. 143-215.107D, as enacted by Section 1 of this act, will also result in significant reductions in the emissions of mercury from coal-fired generating units. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to monitoring emissions of mercury and the development and implementation of standards and plans to implement programs to control emissions of mercury from coal-fired generating units. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of mercury. The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of mercury from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of mercury is reduced as a result of the reductions in the emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

"The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to the development and implementation of standards and plans to implement programs to control emissions of carbon dioxide (CO2) from coal-fired generating units and other stationary sources of air pollution. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of carbon dioxide (CO2). The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of carbon dioxide (CO2) from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of carbon dioxide (CO2) is reduced as a result of the reductions in the emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

"On or before 1 June of each year, the Department of Environment and Natural Resources and the Utilities Commission shall report on the implementation of this act to the Environmental Review Commission and the Joint Legislative Utility Review Committee. The first report required by this section shall be submitted no later than 1 June 2003."

§ 143-215.107C. State agency goals, plans, duties, and reports.

(a) As used in this section, alternative-fueled vehicle means a motor vehicle capable of operating on electricity; natural gas; propane; hydrogen; reformulated gasoline; ethanol; other alcohol fuels, separately or in mixtures of eighty-five percent (85%) or more of alcohol by volume; or fuels, other than alcohol, derived from biological materials. For purposes of this section, a vehicle that has been converted to operate on a fuel other than the fuel for which it was originally designed is not a new or replacement vehicle.

(b) It shall be the goal of the State that on and after 1 January 2004 at least seventy-five percent (75%) of the new or replacement light duty cars and trucks purchased by the State will be alternative-fueled vehicles or low emission vehicles. The Department of Administration, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop a plan to achieve this goal and to fuel and maintain these vehicles. For purposes of this section, a light duty car or truck is one that is rated at 8,500 pounds or less Gross Vehicle Weight Rating (GVWR).

(c) Repealed by Session Laws 2006-79, s. 13, effective July 10, 2006.

(d) The Department of Administration, the Office of State Personnel, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by State employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of carpooling, vanpooling, public transportation, incentives, and other appropriate strategies. The Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(e) The Department of Transportation, the Department of Commerce, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by private sector employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of incentives for both private sector employees and employers to promote carpooling, vanpooling, use of public transportation, and other appropriate strategies. The Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(f) The Office of State Personnel shall implement a policy that promotes telework/telecommuting for State employees as recommended by the report of the State Auditor entitled "Establishing a Formal Telework/Telecommuting Program for State Employees" and dated October 1997. It shall be the goal of the State to reduce State employee vehicle miles traveled in commuting by twenty percent (20%) without reducing total work hours or productivity. (1999-328, ss. 4.1, 4.2, 4.5, 4.6, 4.7, 4.8; 2004-195, s. 2.4; 2005-386, s. 2.2; 2006-79, s. 13.)

Effect of Amendments. —

Session Laws 2006-79, s. 13, effective July 10, 2006, repealed subsection (c).

§ 143-215.107D. Emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from certain coal-fired generating units.

Report. — Session Laws 2005-442, s. 11, as amended by Session Laws 2006-73, s. 1, provides: "The Commission shall submit an interim report to the General Assembly and the Environmental Review Commission no later than 15 January 2007 and may submit interim reports at other times at its discretion. The Commission shall submit a final report, including any findings and recommendations, to the General Assembly and the Environmental Review Commission on or before 15 April 2008, at which time the Commission shall terminate."

Session Laws 2002-4, which enacted G.S. 143-107D and G.S. 62-133.6, in ss. 10-14, as amended by Session Laws 2006-79, s. 12, provide: "10. It is the intent of the General Assembly that the State use all available resources and means, including negotiation, participation in interstate compacts and multistate and interagency agreements, petitions pursuant to 42 U.S.C. § 7426, and litigation to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) comparable to those required by G.S. 143-215.107D, as enacted by Section 1 of this act, on a comparable schedule. The State shall give particular attention to those states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage.

"11. The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) beyond those required by G.S. 143-215.107D, as enacted by Section 1 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) taken by states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September 2007.

"12. The General Assembly anticipates that measures implemented to achieve the reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required by G.S. 143-215.107D, as enacted by Section 1 of this act, will also result in significant reductions in the emissions of mercury from coal-fired generating units. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to monitoring emissions of mercury and the development and implementation of standards and plans to implement programs to control emissions of mercury from coal-fired generating units. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of mercury. The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of mercury from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of mercury is reduced as a result of the reductions in the emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

"13. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to the development and implementation of standards and plans to implement programs to control emissions of carbon dioxide (CO2) from coal-fired generating units and other stationary sources of air pollution. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of carbon dioxide (CO2). The Division shall annually report its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 September 2003. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 September 2005. The costs of implementing any air quality standards and plans to reduce the emission of carbon dioxide (CO2) from coal-fired generating units below the standards in effect on the date this act becomes effective, except to the extent that the emission of carbon dioxide (CO2) is reduced as a result of the reductions in the emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required to achieve the emissions limitations set out in G.S. 143-215.107D, as enacted by Section 1 of this act, shall not be recoverable pursuant to G.S. 62-133.6, as enacted by Section 9 of this act.

"14. On or before 1 June of each year, the Department of Environment and Natural Resources and the Utilities Commission shall report on the implementation of this act to the Environmental Review Commission and the Joint Legislative Utility Review Committee. The first report required by this section shall be submitted no later than 1 June 2003."

§ 143-215.108. Control of sources of air pollution; permits required.

Editor's Note. —

Session Laws 2006-255, s. 5.4, provides: "The provisions of 15A NCAC 2D.0530(b)(1)(A)(iv) as adopted by the Environmental Management Commission on 10 February 2005 and as approved by the Rules Review Commission on 21 April 2005, do not apply to any application for an air quality permit that is submitted and determined to be administratively complete by the Department of Environment and Natural Resources on or before 1 August 2006. An air quality permit issued pursuant to an application described in this section shall both:

"(1) Include a requirement that the permittee will install advanced control technology designed to remove ninety-nine percent (99%) of any pollutants at each electric generating unit to which 15A NCAC 2D.0530(b)(1)(A)(iv) would otherwise apply and that the permittee will operate the advanced control technology at any time that electricity is being produced by the electric generating unit other than during startup of the unit.

"(2) State that the actual emissions of sulfur dioxide (SO2) shall be no greater than 0.15 pound per million British Thermal Units (BTUs) as measured on a rolling 30-day average."

§ 143-215.114A. Enforcement procedures: civil penalties.

CASE NOTES

Open Burning. — Where a contractor had nine open burning piles within 1,000 feet from a dwelling, the North Carolina Department of Environment and Natural Resources and the Environmental Management Commission did not exceed their discretion and authority under G.S. 143-211(c), 143-215.107(a)(1), (3), and 143-215.114A(a)(1) in interpreting each pile to be one violation. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005).

ARTICLE 24.

Wildlife Resources Commission.

§ 143-250. (Effective July 1, 2007) Wildlife Resources Fund.

All moneys in the game and fish fund or any similar State fund when this Article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State Treasurer shall deposit all such moneys in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of

G.S. 143-250 is set out twice. See notes.

Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources shall also be transferred to the Wildlife Resources Fund.

Except as otherwise specifically provided by law, all moneys derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, including the income received and accruing from the investment of license revenues, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this Article. License revenues include the proceeds from the sale of hunting, fishing, trapping, and related licenses, from the sale, lease, rental, or other granting of rights to real or personal property acquired or produced with license revenues, and from federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is being made. For purposes of this section, real property includes lands, buildings, minerals, energy resources, timber, grazing rights, and animal products. Personal property includes equipment, vehicles, machines, tools, and annual crops. The Wildlife Resources Fund herein created shall be subject to the provisions of the State Budget Act, Chapter 143C of the General Statutes of North Carolina as amended, and the provisions of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, Chapter 143, Article 2 of the General Statutes of North Carolina as amended.

All moneys credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this Article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this Article, Chapter 75A, Article 1, and Chapter 113, Subchapter IV of the General Statutes of North Carolina. The Wildlife Resources Commission shall report to the Joint Legislative Commission on Governmental Operations before expending from the Wildlife Resources Fund more than the amount authorized in the budget enacted by the General Assembly for the fiscal period.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned. (1947, c. 263, s. 14; 1965, c. 957, s. 16; 1981, c. 482, s. 2; 1982 (Reg. Sess., 1982), c. 1182, s. 1; 1987, c. 816; 1991, c. 689, s. 167(a); 2006-203, s. 92.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 92, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act, Chapter 143C" for "Executive Budget Act, Chapter 143, Article 1" near the end of the third paragraph.

§ 143-254.5. Disclosure of personal identifying information.

Social security numbers and identifying information obtained by the Commission shall be treated as provided in G.S. 132-1.10. For purposes of this section, "identifying information" also includes a person's mailing address, residence address, date of birth, and telephone number. (2005-455, s. 1.17; 2006-255, s. 11.1.)

Effect of Amendments. — Session Laws 2006-255, s. 11.1, effective August 23, 2006, rewrote the section.

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.

CASE NOTES

I. In General.

I. IN GENERAL.

Procedural Rules. — Regarding the procedural rules governing proceedings under the North Carolina Tort Claims Act, G.S. 143-291 et seq., the North Carolina Industrial Commission is authorized under G.S. 143-300 to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of the Tort Claims Act. However, the North Carolina Rules of Civil Procedure apply in tort claims before the Commission, to the extent that such rules are not inconsistent with the Tort Claims Act, in which case the Tort Claims Act controls. Pate v. N.C. DOT, — N.C. App. —, 626 S.E.2d 661, 2006 N.C. App. LEXIS 528 (2006).

Res Judicata. — Decision and order of the North Carolina Industrial Commission was affirmed because the property owners' negligence claim against a state agency was not barred under the doctrine of res judicata due to a prior inverse condemnation ruling against the property owners in a civil action. The negligence claim brought by the owners was not the same claim as the inverse condemnation claim that the owners brought in the civil action. Pate v. N.C. DOT, — N.C. App. —, 626 S.E.2d 661, 2006 N.C. App. LEXIS 528 (2006).

Negligence Claim Against State Jail Inspection Agency Not Barred By Public Duty Doctrine. — Public duty doctrine did not apply to bar a negligence suit brought by multiple plaintiffs against the North Carolina Department of Health and Human Services (DHHS), after four inmates were killed and one inmate was seriously injured as a result of a jailhouse fire. Plaintiffs' complaint, which alleged that the inspector for DHHS was negligent in his inspection of the jail and that DHHS failed to properly train the inspector to perform his duties as an inspector of county jails, was not barred under the public duty doctrine because DHHS' duty to inspect was for the purpose of protecting the inmates and not for protection of the public generally or, even if the public duty doctrine did apply, plaintiffs fell within the special relationship exception to that doctrine of custodian/prisoner, therefore, the motion to dismiss filed by DHHS was properly denied. Multiple Claimants v. N.C. HHS, Div. of Facility and Detention Servs., — N.C. App. —, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006).

Construction with Other Provisions. — Decision and order of the North Carolina Industrial Commission was affirmed because the North Carolina Tort Claims Act, G.S. 143-291 et seq., governed the property owners' negligence claim against a state agency, rather than G.S. 136-111. The statute addressed actions seeking damages for condemnation, while the North Carolina Tort Claims Act governed negligence claims. Pate v. N.C. DOT, — N.C. App. —, 626 S.E.2d 661, 2006 N.C. App. LEXIS 528 (2006).

School Board Properly Held Liable. — Commission did not err under G.S. 143-291(a) in finding that school bus driver was negligent in failing to stop the bus and break up a fight, rather than returning to the school, as the driver did not meet the driver's duty to follow the applicable rules of safety, there was a safe place to pull over, the beating could have been prevented if the bus had been stopped, and the driver's testimony that the driver would have acted in the same manner even if the incident occurred 10 miles from the school showed a disregard of established rules. Simmons v. Columbus County Bd. of Educ., 171 N.C. App. 725, 615 S.E.2d 69, 2005 N.C. App. LEXIS 1317 (2005).

Public Duty Doctrine Applicable to Tort Claims Act Actions. —

Public duty doctrine applies to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against North Carolina Department of Environment and Natural Resources (NCDENR) for alleged mismanagement of forest fires; G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, are designed to protect the citizens of North Carolina as a whole. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

Claim Barred by Public Duty Doctrine. —

Denial of the motion to dismiss and for judgment on the pleadings filed by the North Carolina Division of Forest Resources (NCDFR), a division of the North Carolina Department of Environment and Natural Resources (NCDENR), was reversed as the public duty doctrine applied to negligence claims filed under the North Carolina Tort Claims Act, G.S. 143-291 et seq., against NCDENR for the alleged mismanagement of forest fires; as G.S. 113-51, 113-52, 113-54, and 113-55, which set forth the powers and duties of NCDENR and appointed state forest rangers, were designed to protect the citizens of North Carolina as a whole, NCDENR did not owe a specific duty to the administratrix of a decedent killed in a car accident allegedly due to a forest ranger's negligence in managing a forest fire or to the other drivers and owners of cars involved in the accident and their negligence complaints failed to state a claim. Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

Negligence Complaint Not Barred by Public Duty Doctrine. — Negligence complaints against the Division of Forest Resources, alleging negligence in failing to extinguish a forest fire which caused smoke and fog to obscure the vision of drivers on a highway, were not barred by the public duty doctrine, because the forest ranger alleged to have been negligent was not a law enforcement officer, as defined by the Tort Claims Act, and no allegations were made that the forest ranger failed to detect and prevent misconduct of others through improper inspections. Myers v. McGrady, 170 N.C. App. 501, 613 S.E.2d 334, 2005 N.C. App. LEXIS 1087 (2005).

Effect of Premature Appeal on Jurisdiction. — Decision and order of the North Carolina Industrial Commission was affirmed because a deputy commissioner of the Commission did not lack jurisdiction to hear the property owners' negligence claim after a state agency filed its notice of appeal regarding the state agency's summary judgment motion before a hearing as the state agency could not file an appeal before the commissioner made a ruling. Pate v. N.C. DOT, — N.C. App. —, 626 S.E.2d 661, 2006 N.C. App. LEXIS 528 (2006).

Cited in Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005).

§ 143-293. Appeals to Court of Appeals.

CASE NOTES

Finding of Negligence Reversed. — North Carolina Industrial Commission award to vehicle owners was reversed because the Industrial Commission's finding that a bailment was created when the North Carolina Department of Motor Vehicles (DMV) seized the owners' vehicles and had them stored pending a criminal case was reversed because the seizure of the vehicles was a unilateral act which did not suggest the mutual intent necessary to form even an implied bailment contract. Further, the findings of fact by the Industrial Commission did not support a finding of negligence by the DMV. Becker v. N.C. DMV, — N.C. App. —, 628 S.E.2d 446, 2006 N.C. App. LEXIS 969 (2006).

Competent evidence supported factual findings, pursuant to G.S. 143-293, that bus driver noticed the fight between the students before turning onto the highway and that the fight escalated as the driver turned onto the highway; the injured party testified that the fight began before the bus turned onto the highway, thus creating a reasonable inference that the fight escalated as the bus turned onto the highway, and the driver noticed the fight prior to turning onto the highway, as the driver yelled to the children. Simmons v. Columbus County Bd. of Educ., 171 N.C. App. 725, 615 S.E.2d 69, 2005 N.C. App. LEXIS 1317 (2005).

Where the North Carolina Industrial Commission found that the school bus driver was negligent for failing to pull the bus over and stop the fight, competent evidence under G.S.143-293 supported the finding that there was a safe place for the driver to pull the bus over; testimony was received establishing that there was a safe place where the driver could have stopped the bus. Simmons v. Columbus County Bd. of Educ., 171 N.C. App. 725, 615

S.E.2d 69, 2005 N.C. App. LEXIS 1317 (2005).

Finding of Negligence Upheld. — Decision and order of the North Carolina Industrial Commission was affirmed because (1) the North Carolina Tort Claims Act, G.S. 143-291 et seq., governed the property owners' negligence claim against a state agency, rather than G.S. 136-111; (2) the deputy commissioner of the Commission did not lack jurisdiction to hear the matter after the state agency filed its notice of appeal before a hearing as the state agency could not file an appeal before the commissioner made a ruling; and (3) the negligence claim was not barred under the doctrine of res judicata due to a prior inverse condemnation ruling in a civil action. Pate v. N.C. DOT, — N.C. App. —, 626 S.E.2d 661, 2006 N.C. App. LEXIS 528 (2006).

Cited in Multiple Claimants v. N.C. HHS, Div. of Facility and Detention Servs., — N.C. App. —, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006).

§ 143-299.1. Contributory negligence a matter of defense; burden of proof.

CASE NOTES

Contributory Negligence of Minor. — Where the bus driver was found negligent in failing to pull the school bus over in order to stop the fight between the student and the injured party, who was 11 years old, the Columbus County Board of Education could not rely on a defense of contributory negligence by the injured party, as the Board failed to prove contributory negligence pursuant to G.S. 143-299.1; it was presumed that a child of the injured party's age was incapable of contributory negligence, and the Board failed to show that the injured party did not handle herself as a normal 11-year-old child. Simmons v. Columbus County Bd. of Educ., 171 N.C. App. 725, 615 S.E.2d 69, 2005 N.C. App. LEXIS 1317 (2005).

§ 143-299.3. Use of State vehicles by North Carolina Amateur Sports; State to incur no liability.

Local Modification. — Columbus: 1977, c. 850; Moore County Board of Education: 1999-176, s. 1 (effective June 14, 1999-June 20, 1999); Haywood County Consolidated School System Board of Education: 2006-3 (use of buses for events); Roanoke Rapids Graded School District: 2006-8 (as to use of buses to serve transportation needs of BikeWalk Virginia event).

§ 143-300. Rules and regulations of Industrial Commission; destruction of records.

CASE NOTES

Procedural Rules. — Regarding the procedural rules governing proceedings under the North carolina Tort Claims Act, G.S. 143-291 et seq., the North Carolina industrial Commission is authorized under G.S. 143-300 to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of the Tort Claims Act. However, the North carolina Rules of Civil Procedure apply in tort claims before the Commission,to the extent that such rules are not inconsistent with the Tort Claims Act, in which case the Tort Claims Act controls. Pate v. N.C. DOT, — N.C. App. —, 626 S.E.2d 661, 2006 N.C. App. LEXIS 528 (2006).

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.

CASE NOTES

Cited in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006); Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

Article 31A.

Defense of State Employees, Medical Contractors and Local Sanitarians.

§ 143-300.8. Defense of local sanitarians.

Any local health department sanitarian enforcing rules of the Commission for Health Services or of the Environmental Management Commission under the supervision of the Department of Environment and Natural Resources pursuant to G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health Services or of the Environmental Management Commission. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6. (1987, c. 654, s. 2; 1989, c. 727, s. 219(36); 1997-443, s. 11A.96; 2006-202, s. 7.)

Effect of Amendments. — Session Laws 2006-202, s. 7, effective August 7, 2006, in the first sentence, inserted "or of the Environmental management Commission" near the beginning, substituted "G.S. 130A-4" for "G.S. 130A-4(b)" near the middle, and added "or of the Environmental Management Commission" at the end.

Article 31D.

State Employee Federal Remedy Restoration Act.

§ 143-300.35. State Employee Federal Remedy Restoration Act.

CASE NOTES

Waiver of Immunity. — In an action by a state employee against his state employer alleging that the employer violated the Americans with Disabilities Act (ADA), and the Age Discrimination in Employment Act (ADEA), the state waived its immunity under U.S. Const. amend. XI to the employee's ADA and ADEA claims, pursuant to G.S. 143-300.35, because the employee was not in an exempt policy-making position, and his cause of action arose after October 1, 2001. Wright v. N.C. HHS, 405 F. Supp. 2d 631, 2005 U.S. Dist. LEXIS 36653 (E.D.N.C. 2005).

Article 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

CASE NOTES

Mediation Was Not a Public Meeting. — Because no more than one representative of a city or a county participated in a mediation, it was not an official meeting mandated to be open to the public pursuant to G.S. 143-318.9 et seq.; the mediation, which was to negotiate terms of an agreement, was not called or held to evade the spirit and the purposes of the statute and thus was not an official meeting. Gannett Pac. Corp. v. City of Asheville, — N.C. App. —, 632 S.E.2d 586, 2006 N.C. App. LEXIS 1642 (2006).

§ 143-318.10. All official meetings of public bodies open to the public.

CASE NOTES

Mediation Was Not Public Meeting. — Because no more than one representative of a city or a county participated in a mediation, it was not an official meeting mandated to be open to the public pursuant to G.S. 143-318.9 et seq.; the mediation, which was to negotiate terms of an agreement, was not called or held to evade the spirit and the purposes of the statute and thus was not an official meeting. Gannett Pac. Corp. v. City of Asheville, — N.C. App. —, 632 S.E.2d 586, 2006 N.C. App. LEXIS 1642 (2006).

§ 143-318.12. Public notice of official meetings.

CASE NOTES

Notice to Local Media Adequate. — Summary judgment was properly awarded to a city and its officials in an action by property owners challenging an annexation because the city complied with the Open Meetings Law, G.S. 143-318.12(b)(2), by providing notice of the special meetings regarding the annexation to the local media at least 48 hours in advance. Brown v. City of Winston-Salem, 171 N.C. App. 266, 614 S.E.2d 599, 2005 N.C. App. LEXIS 1266 (2005).

§ 143-318.14A. Legislative commissions, committees, and standing subcommittees.

(a) Except as provided in subsection (e) below, all official meetings of commissions, committees, and standing subcommittees of the General Assembly (including, without limitation, joint committees and study committees), shall be held in open session. For the purpose of this section, the following also shall be considered to be "commissions, committees, and standing subcommittees of the General Assembly":

(1) The Legislative Research Commission;
(2) The Legislative Services Commission;
(3) **(Repealed effective July 1, 2007)** The Advisory Budget Commission;
(4) The Joint Legislative Utility Review Committee;
(5) The Joint Legislative Commission on Governmental Operations;
(6) The Joint Legislative Commission on Municipal Incorporations;
(7) Repealed by Session Laws 1997, c. 443, s. 12.30, effective August 28, 1997.
(8) The Joint Select Committee on Low-Level Radioactive Waste;
(9) The Environmental Review Commission;
(10) The Joint Legislative Transportation Oversight Committee;
(11) The Joint Legislative Education Oversight Committee;
(12) The Joint Legislative Commission on Future Strategies for North Carolina;
(13) The Commission on Children with Special Needs;
(14) The Legislative Committee on New Licensing Boards;
(15) The Agriculture and Forestry Awareness Study Commission;
(16) The North Carolina Study Commission on Aging; and
(17) The standing Committees on Pensions and Retirement.

(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, "reasonable public notice" includes, but is not limited to:

(1) Notice given openly at a session of the Senate or of the House; or

(2) Notice mailed or sent by electronic mail to those who have requested notice, and to the Legislative Services Office, which shall post the notice on the General Assembly web site.

G.S. 143-318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly.

(c) A commission, committee, or standing subcommittee of the General Assembly may take final action only in an open meeting.

(d) A violation of this section by members of the General Assembly shall be punishable as prescribed by the rules of the House or the Senate.

(e) The following sections shall apply to meetings of commissions, committees, and standing subcommittees of the General Assembly: G.S. 143-318.10(e) and G.S. 143-318.11, G.S. 143-318.13 and G.S. 143-318.14, G.S. 143-318.16 through G.S. 143-318.17. (1991, c. 694, s. 7; 1991 (Reg. Sess., 1992), c. 785, s. 4; c. 1030, s. 42; 1993, c. 321, s. 169.2(f); 1997-443, s. 12.30; 2003-374, s. 1; 2006-203, s. 93.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 93, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, repealed subdivision (a)(3).

§ 143-318.15. (Repealed effective July 1, 2007) Advisory Budget Commission and appropriation committees of General Assembly; application of Article.

(a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-10 (or any similar statutes hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) This Article does not amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees and subcommittees of the General Assembly. (1979, c. 655, s. 1; 2006-203, s. 94.)

Section Repealed Effective July 1, 2007. — This section is repealed effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, by Session Laws 2006-203, s. 94.

Session Laws 2006-203, s. 126, provides: "This act becomes effective July 1, 2007, and applies to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-318.17. Disruptions of official meetings.

CASE NOTES

Qualified Immunity to Police Officers Who Removed Allegedly Disruptive alderman From Meeting. — Police officers who removed an alderman from a town board of aldermen meeting at the direction of other aldermen because the alderman was allegedly violating board rules were entitled to qualified immunity as to the alderman's claim of unlawful seizure as they had probable cause to seize the alderman. King v. Jefferies, 402 F. Supp. 2d 624, 2005 U.S. Dist. LEXIS 30548 (M.D.N.C. 2005).

§ 143-318.18. Exceptions.

This Article does not apply to:

(1) Grand and petit juries.

(2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.

(3) The Judicial Standards Commission.

(3a) The North Carolina Innocence Inquiry Commission.

(4) Repealed by Session Laws 1991, c. 694, s. 9.

(4a) The Legislative Ethics Committee.

(4b) A conference committee of the General Assembly.

(4c) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.

(5) Law enforcement agencies.

(6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supersede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

(7) **(Effective until July 1, 2007)** Any public body subject to the Executive Budget Act (G.S. 143-1 et seq.) and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.

(7) **(Effective July 1, 2007)** Any public body subject to the State Budget Act, Chapter 143C of the General Statutes and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.

(8) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238.

(9) Repealed by Session Laws 1991, c. 694, s. 9.

(10) The Board of Awards.

(11) The General Court of Justice. (1979, c. 655, s. 1; 1985, c. 757, s. 206(e); 1991, c. 694, s. 9; 2006-184, s. 6; 2006-203, s. 95.)

Subdivision (7) Set Out Twice. — The first version of subdivision (7) set out above is effective until July 1, 2007. The second version of subdivision (7) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-184, s. 6, effective August 3, 2006, and applicable to claims of factual innocence filed on or before December 31, 2010, added subdivision (3a).

Session Laws 2006-203, s. 95, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act, Chapter 143C of the General Statutes" for "Executive Budget Act (G.S. 143-1 et seq.)" in subdivision (7).

ARTICLE 36.

Department of Administration.

Part 1. General Provisions.

§ 143-341. Powers and duties of Department.

The Department of Administration has the following powers and duties:

(1) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 38.

(2) Purchase and Contract:

a. To exercise those powers and perform those duties which were, at the time of the ratification of this Article, conferred by statute upon the former Division of Purchase and Contract.

(3) **(Effective until July 1, 2007)** Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; and

2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

b1. To certify that a statement of needs pursuant to G.S. 143-6 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000).

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no

G.S. 143-341(3), (4)g and (8)i.7a are set out twice. See notes.

such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivisions b. and b1. of this subdivision, this subdivision does not apply to the design, construction, or renovation of projects by The University of North Carolina pursuant to G.S. 116-31.11.

(3) **(Effective July 1, 2007)** Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; and

2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

b1. To certify that a statement of needs pursuant to G.S. 143C-3-3 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000).

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

e. To require all State agencies to use existing plans and specificiations for construction projects, where feasible. Prior to designing a project, State agencies shall consult with the Department of Administration on the availability of appropriate existing plans and specifications and the feasibility of using them for a project.

Except for sub-subdivisions b., b1., and e. of this subdivision, this subdivision does not apply to the design, construction, or renovation of projects by The University of North Carolina pursuant to G.S. 116-31.11.

(4) Real Property Control:

a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, description, source of title and current use of all land (including swamplands or marshlands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys may be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land may be prepared, or copies obtained where such maps or plats are available.

b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space and floor plans of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.

c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.

d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

d1. To require all State departments, institutions, and agencies to use State-owned office space instead of negotiating or renegotiating leases for rental of office space. Any lease entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and the Council of State.

The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than May 1 of each year on leased office space.

d2. To purchase or finance the purchase of buildings, utilities, structures, or other facilities or property developments, including streets and landscaping, the acquisition of land, equipment, machinery, and furnishings in connection therewith; additions, extensions, enlargements, renovations, and improvements to existing buildings, utilities, structures, or other facilities or property developments, including streets and landscaping; land or any interest in land; other infrastructure; furniture, fixtures, equipment, vehicles, machinery, and similar items; or any combination of the foregoing, through installment-purchase, lease-purchase, or other similar type installment financing agreements in the manner and to the extent provided in Article 9 of Chapter 142 of the General Statutes. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Council of State.

e. To make all sales of real property (including marshlands or swamplands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G.S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamplands or marshlands shall be dealt with in the manner required by the Constitution and statutes.

f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

g. **(Effective until September 1, 2007)** Except as otherwise provided by this sub-subdivision, to allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State; provided that if the proposed reallocation is of land with an appraised value of at least twenty-five thousand dollars ($25,000), the reallocation may only be made after consultation with the Joint Legislative Commission on Governmental Operations. The authority granted in this paragraph shall not apply to the State Legislative Building and grounds or to the Legislative Office Building and grounds.

Notwithstanding any other provision of law, the following State-owned property shall not be allocated or reallocated without the prior approval of the General Assembly:

G.S. 143-341(3), (4)g and (8)i.7a are set out twice. See notes.

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1. The property encompassing the Dorothea Dix Hospital campus.
2. The property described in the 1995 Capital Area Master Plan for State Government, Blue Ridge Road Area, developed by O'Brien/Atkins, except for the Special Development District.

g. **(Effective September 1, 2007)** To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State; provided that if the proposed reallocation is of land with an appraised value of at least twenty-five thousand dollars ($25,000), the reallocation may only be made after consultation with the Joint Legislative Commission on Governmental Operations. The authority granted in this paragraph shall not apply to the State Legislative Building and grounds or to the Legislative Office Building and grounds.

h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.

i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded instruments which conveyed title to or from the State or any State agency or officer reindexed, where necessary, to show the State of North Carolina or grantor or grantee, as the case may be, and the cost of such reindexing shall be paid from the State Land Fund.

j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.

k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.

l. To manage and control the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to Chapter 146 of the General Statutes.

m. To contract for or approve all contracts for all appraisals and surveys of real property for all State agencies; provided, however, this provision shall not apply to appraisals and surveys obtained in connection with the acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation.

n. To petition for the annexation of state-owned lands into any municipality.

o. To provide that no fee, other than reimbursement of actual costs incurred and actual revenues lost by the State, shall be charged when State buildings are made available to a production company for a production. As used in this subdivision, the term "production company" has the meaning provided in G.S. 105-164.3.

(5) Administrative Analysis:

a. To study the organization, methods, and procedures of all State agencies, to formulate plans for improvements in the organization, methods, and procedures of any agency studied, and to advise and assist any agency studied in effecting improvements in its organization, methods, and procedures.

b. To report to the Governor its findings and recommendations concerning improvements in the organization, methods, and procedures of any State agency, when such improvements cannot be effected by the cooperative efforts of the Department and the agency concerned.

c. To submit to the Governor for transmittal to the General Assembly recommended legislation where such legislation is necessary to effect improvements in the organization, methods, and procedures of any State agency.

(6) State and Regional Planning:

a. To assist the Director of the Budget in reviewing the capital improvements needs and requests of all State agencies, and in preparing a coordinated biennial capital improvements budget and longer range capital improvements programs.

b. In cooperation with State agencies and other public and private agencies, to collect, analyze, and keep up-to-date a comprehensive collection of economic and social data pertinent to State planning, which shall be available to State and local governmental agencies and private agencies.

c. To coordinate and review all planning activity relative to federal government requirements for general statewide or regional comprehensive program planning.

d. To make economic analyses, studies, and projections and to advise the Governor on courses of action desirable for the maintenance of a sound economy.

e. To encourage and assist in the development of the planning process within State and local governmental agencies.

f. To assist State agencies by providing them with basic information and technical assistance needed in preparing their short-range and long-range programs.

g. To develop and maintain liaison and cooperative arrangements with federal, interstate, State, and private agencies and organizations in the interest of obtaining information and assistance with respect to State and regional planning.

h. To develop and maintain a comprehensive plan for the development of the State, representing the coordinated efforts and contributions of all participating planning groups.

i. In cooperation with the counties, the cities and towns, the federal government, multi-state commissions and private agencies and organizations, to develop a system of multi-county, regional planning districts to cover the entire State, and to assist in preparing for those districts comprehensive development plans coordinated with the comprehensive development plan for the State.

(7) Development Programs:

a. To participate in development programs, to enter into contracts, formulate plans and to do all things necessary to implement development programs in any area of the State.

b. To accept, receive and disburse, in furtherance of its functions, any funds, grants and services made available by the federal government and its agencies, any county, municipality, private or civic sources.

(8) General Services:

a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.

b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.

c. To provide necessary night watchmen for the public buildings and grounds.

d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.

e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.

f. Struck out by Session Laws 1959, c. 68, s. 3.

g. To establish and operate a mail service center that shall be used by all State agencies other than the Employment Security Commission, and in connection therewith and in the discretion of the Secretary, to do all things necessary in connection with the maintenance of the mail service center. The Secretary shall allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the mail service center. The Secretary shall develop a plan for the efficient operation of the center that meets the needs of State agencies, ensures timely delivery of mail, and ensures no loss of federal funds.

h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

    1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.

    2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.

    2a. To participate in the energy credit banking and selling program under G.S. 143-58.4. The Division of Motor Fleet Management of the Department of Administration is eligible to receive proceeds from the Alternative Fuel Revolving Fund under G.S. 143-58.5 to purchase alternative fuel, develop alternative fuel refueling infrastructure, or purchase AFVs as defined in G.S. 143-58.4.

    3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control

of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement purposes, and except those motor vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency purposes.

4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department, using best management practices. The Department shall ensure that state-owned vehicles are replaced when most cost effective using a replacement formula developed by the Department and reviewed periodically for appropriateness of use. The Department shall report semiannually to the cochairs of the Joint Appropriations Subcommittee on General Government, on or before October 15 and March 15, on the effect of any new or revised replacement formula on the cost of operating the central motor pool, including the amount of any savings from use of any new or revised replacement formula.
5. Upon proper requisition, proper showing of need for use on State business only, and proper showing of proof that all persons who will be driving the motor vehicle have valid drivers' licenses, to assign economically suitable transportation, either on a temporary or permanent basis, to any State employee or agency. An agency assigned a motor vehicle may not allow a person to operate that motor vehicle unless that person displays to the agency and allows the agency to copy that person's valid driver's license. Notwithstanding G.S. 20-30(6), persons or agencies requesting assignment of motor vehicles may photostat or otherwise reproduce drivers' licenses for purposes of complying with this subpart.

   As used in this subpart, "economically suitable transportation" means the most cost-effective standard vehicle in the State motor fleet, unless special towing provisions are required by the agency. The Department may not assign any employee or agency a motor vehicle that is not economically suitable. The Department shall not approve requests for vehicle assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non-job-related reason. The Department shall not assign "special use" vehicles, such as four-wheel drive vehicles or law enforcement vehicles, to any agency or individual except upon written justification, verified by historical data, and accepted by the Secretary. The Department may provide law enforcement vehicles only to those agencies which have statutory pursuit authority.
6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.

   The amount allocated and charged by the Department of Administration to State agencies to which transportation is furnished shall be at least as follows:

   I. Pursuit vehicles and full size four-wheel drive vehicles $.24/mile.

II. Vans and compact four-wheel drive vehicles — $.22/mile.
III. All other vehicles — $.20/mile.

7. To adopt, with the approval of the Governor, reasonable rules for the efficient and economical operation, maintenance, repair, and replacement, as limited in paragraph 4. of this subdivision, of all state-owned motor vehicles under the control of the Department, and to enforce those rules; and to adopt, with the approval of the Governor, reasonable rules regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules. The Department, with the approval of the Governor, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules adopted by the Department pursuant to this paragraph. Any person who violates a rule adopted by the Department and approved by the Governor is guilty of a Class 1 misdemeanor.

7a. **(Effective until July 1, 2007)** To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a, "state-owned passenger motor vehicle" includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data. The Department shall not assign any state-owned motor vehicle that may be used for commuting other than those authorized by the procedure prescribed in this subdivision.

A State-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose the individual routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. Each agency, other than the Department of Transportation, that has a vehicle assigned to it or has an employee to whom a vehicle is assigned shall submit a quarterly report to the Division of Motor Fleet Management on the miles driven during the quarter by the assigned vehicle. The Division of Motor Fleet Management shall review the report to verify that each motor vehicle has been driven at the minimum allowable rate. If it has not and if the department by whom the individual to which the car is assigned is employed or the agency to which the car is assigned cannot justify the lower mileage for the quarter, the permanent assignment shall be revoked immediately. The Department of Transportation shall submit an annual report to the Division of Motor Fleet Management on the miles driven during the year by vehicles assigned to the Department or to employees of the Department. If a vehicle included in this report has not been driven at least 12,600 miles during the year, the Department of Transportation shall review the reasons for the lower mileage and decide whether to terminate the assignment. The Division of Motor Fleet Management may not revoke the assignment of a vehicle to the Department of Transportation or an employee of that Department for failure to meet the minimum mileage requirement unless the Department of Transportation consents to the revocation.

Every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between the individual's official work station and his or her home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be for 20 days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation, which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the General Fund. Commuting, for purposes of this paragraph, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Management. Also, this paragraph does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses with over 20 person capacities, (vi) ambulances, (vii) [Repealed]. (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that

G.S. 143-341(3), (4)g and (8)i.7a are set out twice. See notes.

are used in undercover work and are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Services regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans between their official work stations and their homes, who are not required to reimburse the State for these trips.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a State-owned passenger motor vehicle, pickup truck or van to any individual who:

I. Uses the vehicle for other than official business except in accordance with the commuting rules;

II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;

III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;

IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him or her and does not cure the deficiency within 30 days of receiving a request to do so;

V. Abuses the vehicle; or

VI. Violates other rules or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the approval of the Governor, may revoke this delegation of authority.

Prior to adopting rules under this paragraph, the Secretary of Administration may consult with the Advisory Budget Commission.

Notwithstanding the provisions of this section and G.S. 14-247, the Department of Administration may allow the organization sanctioned by the Governor's Council on Physical Fitness to conduct the North Carolina State Games to use State trucks and vans for the State Games of North Carolina. The Department of Administration shall not charge any fees for the use of the vehicles for the State Games. The State shall incur no liability for any damages resulting from the use of vehicles under this provision. The organization that conducts the State Games shall carry liability insurance of not less than one million dollars ($1,000,000) covering such vehicles while in its use and shall be responsible for the full cost of repairs to these vehicles if they are damaged while used for the State Games.

7a. **(Effective July 1, 2007)** To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a, "state-owned passenger motor vehicle" includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data. The Department shall not assign any state-owned motor vehicle that may be used for commuting other than those authorized by the procedure prescribed in this subdivision.

A State-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose the individual routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. Each agency, other than the Department of Transportation, that has a vehicle assigned to it or has an employee to whom a vehicle is assigned shall submit a quarterly report to the Division of Motor Fleet Management on the miles driven during the quarter by the assigned vehicle. The Division of Motor Fleet Management shall review the report to verify that each motor vehicle has been driven at the minimum allowable rate. If it has not and

G.S. 143-341(3), (4)g and (8)i.7a are set out twice. See notes.

if the department by whom the individual to which the car is assigned is employed or the agency to which the car is assigned cannot justify the lower mileage for the quarter, the permanent assignment shall be revoked immediately. The Department of Transportation shall submit an annual report to the Division of Motor Fleet Management on the miles driven during the year by vehicles assigned to the Department or to employees of the Department. If a vehicle included in this report has not been driven at least 12,600 miles during the year, the Department of Transportation shall review the reasons for the lower mileage and decide whether to terminate the assignment. The Division of Motor Fleet Management may not revoke the assignment of a vehicle to the Department of Transportation or an employee of that Department for failure to meet the minimum mileage requirement unless the Department of Transportation consents to the revocation.

Every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between the individual's official work station and his or her home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be for 20 days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation, which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the General Fund. Commuting, for purposes of this paragraph, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Management. Also, this paragraph does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses with over 20 person capacities, (vi) ambulances, (vii) [Repealed]. (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that are used in undercover work and are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and

Federal Internal Revenue Services regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans between their official work stations and their homes, who are not required to reimburse the State for these trips.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a State-owned passenger motor vehicle, pickup truck or van to any individual who:

I. Uses the vehicle for other than official business except in accordance with the commuting rules;

II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;

III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;

IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him or her and does not cure the deficiency within 30 days of receiving a request to do so;

V. Abuses the vehicle; or

VI. Violates other rules or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the approval of the Governor, may revoke this delegation of authority.

Notwithstanding the provisions of this section and G.S. 14-247, the Department of Administration may allow the organization sanctioned by the Governor's Council on Physical Fitness to conduct the North Carolina State Games to use State trucks and vans for the State Games of North Carolina. The Department of Administration shall not charge any fees for the use of the vehicles for the State Games. The State shall incur no liability for any damages resulting from the use of vehicles under this provision. The organization that conducts the State Games shall carry liability insurance of not less than one million dollars ($1,000,000) covering such vehicles while in its use and shall be responsible for the full cost of repairs to these vehicles if they are damaged while used for the State Games.

8. To adopt and administer rules for the control of all state-owned passenger motor vehicles and to require State agencies to keep all records and make all reports regarding motor vehicle use as the Secretary deems necessary.
9. To acquire motor vehicle liability insurance on all State-owned motor vehicles under the control of the Department.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.
11. To report annually to the General Assembly on any rules adopted, amended or repealed under paragraphs 3, 7, or 7a of this subdivision.

j. To establish and operate central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.

k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.

l. To provide necessary information service for visitors to the Capitol.

m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor.

(9) Repealed by Session Laws 1989, c. 239, s. 2.

(10) Block Grants. — To establish and maintain a block grants manual that will ensure uniform administration of block grant funds. The manual shall be a comprehensive source of reference for all general and statewide administrative procedures for block grant funds. The manual shall contain the applicable procedures for: the contents of an application, which shall be as simple as possible; the awarding of or contracting with block grant funds; auditing, which shall, to the extent possible, promote the use of single audits of grantees; the ensuring of civil rights compliance by grantees; and monitoring.

(11) Energy-related matters. — To exercise those powers and perform those duties prescribed in Article 1 of Chapter 113B and Part 1 of

Article 3B of Chapter 143 of the General Statutes and Parts 2 and 3 of this Article. (1957, c. 215, s. 2; c. 269, s. 1; 1959, c. 683, ss. 2-4; c. 1326; 1963, c. 1, s. 5; 1965, c. 1023; 1969, c. 1144, s. 2; 1971, c. 1097, s. 3; 1975, c. 399, ss. 1, 2; c. 879, s. 46; 1979, c. 136, s. 1; c. 544; 1979, 2nd Sess., c. 1137, s. 38; 1981, c. 300; c. 859, ss. 48-51; 1981 (Reg. Sess., 1982), c. 1282, s. 62; 1983, c. 267, s. 1; c. 717, s. 74; c. 761, ss. 58, 151, 173, 174; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 122; 1985, c. 479, ss. 168, 170, 174; c. 757, ss. 174, 175, 177; c. 791, s. 51; 1985 (Reg. Sess., 1986), c. 955, ss. 94, 94.1; 1987, c. 738, ss. 43-45, 47(a); c. 827, s. 220; c. 874; 1987 (Reg. Sess., 1988), c. 1086, s. 34(b); 1989, c. 58, s. 2; c. 239, s. 2; 1991, c. 542, s. 10; c. 689, s. 22; 1993, c. 539, s. 1030; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 97, s. 1; c. 402, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 10.2; 1997-412, s. 6; 1998-45, s. 1; 2000-140, s. 76(g); 2000-153, s. 2; 2001-424, s. 7.4; 2001-496, s. 8(d); 2002-126, s. 19.2; 2003-177, s. 1; 2003-284, ss. 18.1, 46.3; 2003-314, s. 1.2; 2005-276, s. 6.25(b); 2005-300, s. 1; 2005-413, s. 3; 2006-203, ss. 96, 97; 2006-217, s. 1.1.)

Subdivisions (3), (4)g and (8)i.7a Set Out Twice — The first versions of subdivisions (3) and (8)i.7a set out above are effective until July 1, 2007. The second versions of subdivisions (3) and (8)i.7a set out above are effective July 1, 2007. The first version of subdivsion (4)g set out above expires September 1, 2007. The second version of subdivision (4)g set out above is effective September 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2006-206, s. 1, provides: "In order to promote attainment of the twenty percent (20%) reduction or displacement of petroleum products consumed in State-owned vehicle fleets by January 1, 2010, as required by Section 19.5 of S.L. 2005-276, the Department of Administration shall develop a plan for the targeted conversion of fuel dispensing facilities to provide greater availability of biodiesel, ethanol, and other alternative fuels. The Department shall consult with affected State agencies to identify measures to increase the efficiency and cost-effective utilization of resources and consider this information in the development of the plan. The Department of Administration shall submit the plan to the Joint Legislative Commission on Governmental Operations no later than November 1, 2006, and shall include updates on the progress in implementing the plan as part of the report required under Section 19.5(c) of S.L. 2005-276."

Effect of Amendments. —

Session Laws 2006-203, s. 96, effective July 1, 2007, substituted "G.S. 143C-3-3" for "G.S. 143-6" in subdivision (3)b1.

Session Laws 2006-203, s. 97, effective July 1, 2007, deleted the next-to-last paragraph of subdivision (8)i.7a which read: "Prior to adopting rules under this paragraph, the Secretary of Administration may consult with the Advisory Budget Commission."

Session Laws 2006-217, s. 1.1, effective July 1, 2007, and applicable to construction projects on which design is begun after that date, added sub-subdivision (3)e; substituted "b, b1., and e." for "b. and b1." in the concluding paragraph of subdivision (3).

§ 143-344. Transfer of functions, property, records, etc.

(a) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 39.

(b) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Purchase and Contract are hereby transferred to the Department of Administration, effective July 1, 1957. All statutory references to the "Division of Purchase and Contract" or the "Purchase and Contract Division" shall be deemed to refer to the Department of Administration.

(c) The transfers directed by subsections (a) and (b) above, shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences or disputes arising incident to such transfers.

(d) **(Repealed effective July 1, 2007)** Insofar as practical the expenses necessary to carry out the provisions of this Article shall, during the 1957-1959 biennium, be provided out of appropriations made to the presently existing agencies the functions of which will be transferred to the Department of Administration; and in the event additional funds are necessary to carry out the provisions of this Article the Governor with the approval of the Council of State and the Advisory Budget Commission is hereby authorized to appropriate such additional necessary expenses from the Contingency and Emergency Fund. (1957, c. 269, s. 1; 1979, 2nd Sess., c. 1137, s. 39; 2006-203, s. 98.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 98, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, repealed subsection (d).

ARTICLE 49A.

Equal Employment Practices.

§ 143-422.1. Short title.

CASE NOTES

Effect of Failure to Establish Claim Under Title VII. — Where former employee, who was a bank branch manager responsible for ensuring that all necessary loan documentation was completed after a loan closing, failed to establish that he was terminated due to race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e-2(a) because there was no evidence that the employee was performing satisfactorily when terminated, he was also unable to establish his wrongful termination claim under the North Carolina Equal Employment Practices Act, G.S. 143-422.1 et seq., which applied the same standard of proof. Ellerby v. Branch Banking & Trust Co., — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 26729 (W.D.N.C. Nov. 3, 2005).

§ 143-422.2. Legislative declaration.

CASE NOTES

Relationship to Federal Law. —

Terminated employee's federal suit found that the employee was not discriminated against on the basis of her age and disability and that the employer's reasons for discharging her (violations of its policies) were not pretextual. If there was no discrimination, then there was no state suit violation of state public policy against discrimination under G.S. 143-422.2 and no negligent infliction of emotional distress based on that alleged violation; therefore, lower court properly applied collateral estoppel principles to bar those two state suit claims. Youse v. Duke Energy Corp., 171 N.C. App. 187, 614 S.E.2d 396, 2005 N.C. App. LEXIS 1209 (2005).

Terminated employee's claim under North Carolina public policy, G.S. 143-422.2, failed because he was unable to state a claim of age discrimination under the Age Discrimination in Employment Act as a matter of law. Holtz v. Jefferson Smurfit Corp., — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 38492 (M.D.N.C. Jan. 4, 2005).

Inapplicable to Employer With Fewer Than 15 Employees. — Where former employee, age 52, was discharged due to her age, trial court properly dismissed the age discrimination action alleging that the discharge violated public policy under G.S. 143-422.2; the employer did not have 15 full-time employees, and G.S. 143-422.2, which constituted the public policy of North Carolina, imposed a 15-employee minimum in order for the discrimination laws to apply. Jarman v. Deason, 173 N.C. App. 297, 618 S.E.2d 776, 2005 N.C. App. LEXIS 2038 (2005).

In an employment discrimination action filed against a local union that had fewer that 15 employees, the respective employees of the local union and an international union could not be combined to satisfy the number of employees requirements of 42 USCS § 2000e(b) of Title VII of the 1964 Civil Rights Act and G.S. 143-422.2 because the unions were distinct, autonomous entities. Hoyle v. UAW Local Union 5285, 444 F. Supp. 2d 467, 2006 U.S. Dist. LEXIS 54422 (W.D.N.C. 2006).

Public Policy Exception to At-Will Employment. —

Employer was granted summary judgment on an employee's wrongful discharge in violation of public policy claim brought pursuant to G.S. 143-422.2 where the employee failed to show that he was meeting the employer's legitimate job expectations given, inter alia, the problems with various machines and engineering projects for which he was responsible. Reed v. Buckeye Fire Equip. Co., 422 F. Supp. 2d 570, 2006 U.S. Dist. LEXIS 21968 (W.D.N.C. 2006).

Former at-will employee could proceed on a common law claim for wrongful discharge based on a violation of the public policy of G.S. 143-422.2, which provided the employee an adequate remedy for discrimination for age and handicap; however, § 143-422.2 applies only to employers and does not apply the corporate officers of the employer. Hardin v. Belmont Textile Mach., Co., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 54452 (W.D.N.C. Aug. 3, 2006).

Sexual Harassment. —

In an action in which a former employee filed suit against her former employer alleging a hostile work environment based on sexual harassment and retaliatory discharge, each in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., as well as wrongful discharge in violation of North Carolina public policy, codified at G.S. 143-422.2, the employer was granted summary judgment on the wrongful discharge claim; North Carolina did not recognize tort claims for wrongful discharge in retaliation for complaints of sexual harassment. Hayes v. Lowe's Food Stores, Inc., — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 11210 (M.D.N.C. May 26, 2005).

ARTICLE 56.

Emergency Medical Services Act of 1973.

§ 143-517. Ambulance support; free enterprise.

CASE NOTES

Cited in Morris v. Rockingham County, 170 N.C. App. 417, 612 S.E.2d 660, 2005 N.C. App. LEXIS 997 (2005).

ARTICLE 64.

Smoking in Public Places.

§ 143-597. Nonsmoking areas in State-controlled buildings.

(a) All of the following areas may be designated as nonsmoking in buildings owned, leased, or occupied by State government:

(1) Any library open to the public.
(2) Any museum open to the public.
(3) Any area established as a nonsmoking area, so long as at least twenty percent (20%) of the interior space of equal quality to that of the nonsmoking area shall be designated as a smoking area, unless physically impracticable. If physically impracticable, the person in charge of the facility shall provide an adequate smoking area within the facility as near as feasible to twenty percent (20%) of the interior space.

(4) Any indoor space in a State-controlled building such as an auditorium, arena, or coliseum, or an appurtenant building thereof; except that a designated area for smoking shall be established in lobby areas.
(5) Any educational buildings primarily involved in health care instruction.
(6) University of North Carolina health services facilities, wellness centers, enclosed physical education facilities, enclosed student recreational centers, laboratories, or residence halls, provided that each constituent institution shall make a reasonable effort to provide residential smoking rooms in residence halls in proportion to student demand for those rooms.
(7) **(Effective July 1, 2007)** The North Carolina School of Science and Mathematics.

(a1) All areas of any building occupied by the General Assembly shall be designated as nonsmoking areas.

(b) Any area designated as nonsmoking or smoking shall be established by the appropriate department, institution, agency, or person in charge of the State-controlled building or area, except as specified in subsection (a1). The person in charge of the building shall conspicuously post or cause to be posted, in any area designated as a smoking or nonsmoking area, one or more signs stating that smoking is or is not permitted in the area.

(c) Where a nonsmoking area is designated, existing physical barriers and ventilation systems shall be used where appropriate to minimize smoke from adjacent areas. This subsection shall not be construed to require fixed structural or other physical modification in providing these areas or to require installation or operation of any heating, ventilating, or air-conditioning system in any manner which adds expense. (1993, c. 367, s. 1; 2003-292, s. 1; 2006-66, s. 9.11(cc); 2006-76, s. 1.)

Editor's Note. — Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 9.11(cc), effective July 1, 2007, added subdivision (a)(7).

Session Laws 2006-76, s. 1, effective July 10, 2006, added subsection (a1); and substituted "area, except as specified in subsection (a1)" for "area" in subsection (b).

§ 143-599. Exemptions.

All of the following facilities shall be exempt from the provisions of this Article:
(1) Any primary or secondary school or child care center, except for a teacher's lounge.
(2) An enclosed elevator.
(3) Public school bus.
(4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.
(5) Local health department and local department of social services and the building and grounds where the local health department or local department of social services, as applicable, is located. For the purposes of this subdivision, "grounds" means the area located within 50 linear feet of a local health department or a local department of social services.
(6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.
(7) Tobacco manufacturing, processing, and administrative facilities.
(8) Indoor arenas with a seating capacity greater than 23,000.

(9) State correctional facilities operated by the Department of Correction.
(10) Community colleges. (1993, c. 367, s. 1; 1997-506, s. 53; 2005-19, s. 1; 2005-168, s. 1; 2005-239, s. 1; 2005-372, s. 1; 2006-133, s. 1.)

Effect of Amendments. —
Session Laws 2006-133, s. 1, effective July 19, 2006, added subdivision (10).

ARTICLE 68.

Regulation of Boxing.

§ 143-651. Definitions.

The following definitions apply in this Article:

(1) Amateur. — A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.
(2) Announcer. — Any person who engages in the act of announcing a boxing match.
(3) Boxer. — Any person who engages as a participant in a boxing match.
(4) Boxing match. — A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or technical knockout (TKO).
(5) Repealed by Session Laws 2004-124, s. 18.2.(a), effective July 1, 2004.
(6) Contest. — A boxing match in which the participants strive to win.
(7) Contestant. — Any person who engages as a participant in a boxing match.
(7a) Division. — The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety.
(8) Exhibition. — A boxing match where the participants display their boxing skills and technique without necessarily striving to win.
(9) Judge. — A person who has a vote in determining the winner of any match or contest.
(10) Kickboxer. — Any person who engages as a participant in a kickboxing match.
(11) Kickboxing match. — A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).
(12) Licensee. — Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.
(13) Manager. — Any person who controls or administers the boxing affairs of any contestant, and who:
    a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the compensation. The term "manager" shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to representing the interests of a professional boxer as a client.
    b. Directs or controls the professional boxing activities of any professional boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) Match. — Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) Matchmaker. — A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) Natural person. — An individual.

(17) Participant. — Any person who engages in a match or exhibition and performs as a boxer.

(18) Person. — An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) Physician. — An individual licensed to practice medicine in this State.

(20) Professional. — Any person who is licensed as a professional boxer under the federal Professional Boxing Safety Act of 1996.

(21) Promoter. — Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) Referee. — The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) Ring official. — Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. — A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. — Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the Division.

(24) Second. — Any person who will work or be present in the corner of a participant for the duration of a match.

(25) Timekeeper. — Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. — Any person who competes in a toughman event.

(25b) Toughman event. — An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) Ultimate warrior match. — A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article. (1995, c. 499, s. 1; 1997-504, s. 1; 1998-23, s. 18; 1998-212, s. 19.11(g); 2004-124, ss. 18.2(a), 18.2(b), 18.2(e); 2006-264, s. 22(c).)

Editor's Note. —

Session Laws 2004-124, s. 18.2(e), as amended by Session Laws 2006-264, s. 22(a), provides: "With the exception of G.S. 143-655, the word 'Commission' shall be replaced with 'Division' every place that word appears in Article 68 of Chapter 143 of the General Statutes."

Effect of Amendments. — Session Laws 2006-264, s. 22(c), effective August 27, 2006, deleted "North Carolina Boxing Commission" at the end of subdivision (23b).

§ 143-654. Licensing and permitting.

Effect of Amendments. — Session Laws 2004-124, s. 18.2(e), as amended by Session Laws 2006-264, s. 22(a), provides: "With the exception of G.S. 143-655, the word 'Commission' shall be replaced with 'Division' every place that word appears in Article 68 of Chapter 143 of the General Statutes."

§ 143-655. Fees; State Boxing Revenue Account.

(a) License Fees. — The Division shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. — The Division may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 — 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Revenue Account. — There is created the State Boxing Revenue Account within the Department of Crime Control and Public Safety. Monies [moneys] collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article. (1995, c. 499, s. 1; 1998-212, s. 19.11(d); 2004-124, s. 18.2(e); 2006-264, s. 22(b).)

Editor's Note. — Session Laws 2004-124, s. 18.2(e), as amended by Session Laws 2006-264, s. 22(a), provides: "With the exception of G.S. 143-655, the word 'Commission' shall be replaced with 'Division' every place that word appears in Article 68 of Chapter 143 of the General Statutes."

Effect of Amendments. — Session Laws 2006-264, s. 22(b), effective August 27, 2006, substituted "Division" for "Commission" near the beginning of subsections (a) and (b); and deleted "Commission" preceding "Revenue" twice in subsection (c).

ARTICLE 75.

Tobacco Trust Fund.

§ 143-717. Commission.

(a) Creation. — The Tobacco Trust Fund Commission is created. The Commission shall be administratively located within the Department of Agriculture and Consumer Services but shall exercise its powers independently of the Commissioner of Agriculture and the Department. All administrative expenses of the Commission shall be paid from the Fund.

(b) Membership. — The Commission shall consist of 18 members. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. The members shall be appointed as follows:

(1) The Governor shall make the following appointments:
  a. A flue-cured tobacco farmer.
  b. A flue-cured tobacco farmer.
  c. A person in or displaced from tobacco-related employment.
  d. An at-large appointee.
  e. An at-large appointee.
  f. An at-large appointee.
(2) The President Pro Tempore of the Senate shall make the following appointments:
  a. A flue-cured tobacco farmer.
  b. A flue-cured tobacco farmer.
  c. A burley tobacco farmer.
  d. An at-large appointee.
  e. An at-large appointee.
  f. An at-large appointee.
(3) The Speaker of the House of Representatives shall make the following appointments:
  a. A flue-cured tobacco farmer.
  b. A former flue-cured allotment holder who is not also a flue-cured tobacco farmer.
  c. A burley tobacco farmer.
  d. An at-large appointee.
  e. An at-large appointee.
  f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State. It is the intent of the General Assembly that at least one-half of the members of the Commission be tobacco farmers.

Except as provided for the initial members under subsection (c) of this section, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term. A member may be removed from office for cause by the authority that appointed that member.

(c) Initial Membership; Staggering. — To provide for a staggered membership, the members initially appointed to the Commission shall be appointed to staggered terms. Of the initial appointments to the Commission, the members initially appointed pursuant to sub-subdivisions (b)(1)a., (1)b., (2)d., and (3)d. of this section shall serve one-year terms ending on June 30, 2001. The members initially appointed pursuant to sub-subdivisions (b)(2)c., (2)e., (3)a., and (3)e. shall serve two-year terms ending on June 30, 2002. The members initially appointed pursuant to sub-subdivisions (b)(1)c., (1)d., (1)e., (2)b., and (3)c. of this section shall serve three-year terms ending June 30, 2003. The remaining members initially appointed pursuant to subsection (b) of this section shall serve four-year terms ending June 30, 2004.

(d) Officers. — The Commission shall elect from its membership a chair, vice-chair, and other officers as necessary for two-year terms beginning July 1 at the first meeting of the Commission held on or after July 1 of every even-numbered year. The vice-chair may act for the chair in the absence of the chair as authorized by the Commission.

(e) Frequency of Meetings. — The Commission shall meet at least quarterly each year and may hold special meetings at the call of the chair or a majority of members. The Governor shall call the initial meeting of the Commission.

(f) Quorum; Majority. — Ten members shall constitute a quorum of the Commission. The Commission may act upon a majority vote of the members of the Commission on matters involving the disbursement of funds and personnel matters properly before the Commission. On all other matters, the Commission may act by majority vote of the members of the Commission at a meeting at which a quorum is present.

(g) Per Diem and Expenses. — The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members shall be paid from the Fund.

(h) Conflict of Interest. — Members of the Commission shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest, except that G.S. 14-234(a) shall not apply to an application for or the receipt of a grant or other financial assistance award by a member of the Commission from the Fund created under this Article, or an entity in which a member of the Commission has an interest, if both of the following conditions are met:

(1) A member does not vote on, participate in the deliberation of, or otherwise attempt through his or her official capacity to influence the vote on, a grant or other financial assistance award by the Commission to the member.

(2) The Commissioner of Agriculture determines that any award to a member is in accordance with general criteria adopted by the Commission for the distribution of funds from the Fund.

(i) Limit on Operating and Administrative Expenses. — No more than two and one-half percent (2 ½%) of the annual receipts of the Fund for the fiscal year beginning July 1 or a total sum of one million dollars ($1,000,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Commission and its staff. All administrative expenses of the Commission shall be paid from the Fund. (2000-147, s. 3; 2006-264, s. 68.)

Effect of Amendments. — Session Laws 2006-264, s. 68, effective August 27, 2006, deleted "burley allotment holder who is also a" in subdivision (b)(2)c; and inserted "former" in subdivision (b)(3)b.

ARTICLE 78.

Commission on State Property.

§ 143-735. Commission established; purpose; membership.

Editor's Note. — As to the state-owned surplus real property system, as enacted by Session Laws 2003-284, ss. 6.8(a) through (g), and as amended by Session Laws 2004-124, ss. 6.4(c) and (d), see editor's note under G.S. 146-22.

Chapter 143A.

State Government Reorganization.

Article 1.

General Provisions.

Sec.
143A-10. (Effective July 1, 2007) Governor; continuation of powers and duties; staff.

ARTICLE 1.

General Provisions.

§ 143A-10. (Effective July 1, 2007) Governor; continuation of powers and duties; staff.

All powers, duties and functions vested by law in the Governor or in the office of Governor are continued, except as otherwise provided by this Chapter.

The immediate staff of the Governor shall not be subject to the State Personnel Act. (1971, c. 864, s. 1; 2006-203, s. 100.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 100, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "; however, salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly" following "State Personnel Act" in the second paragraph.

Chapter 143B.

Executive Organization Act of 1973.

Article 1.

General Provisions.

Part 1. In General.

Sec.
143B-10. Powers and duties of heads of principal departments.

Part 3. Rules Review Commission.

143B-30.1. Rules Review Commission created.

Article 2.

Department of Cultural Resources.

Part 1. General Provisions.

143B-53. Organization of the Department.
143B-53.1. (Effective July 1, 2007) Appropriation, allotment, and expenditure of funds for historic and archeological property.
143B-53.2. Salaries, promotions, and leave of employees of the North Carolina Department of Cultural Resources.

Part 8. U.S.S. North Carolina Battleship Commission.

143B-74.2. U.S.S. North Carolina Battleship Commission — employees.

Part 15. North Carolina State Art Society, Incorporated.

143B-89. North Carolina State Art Society, Incorporated.

Part 27A. Roanoke Island Commission.

143B-131.2. Roanoke Island Commission — Purpose, powers, and duties.
143B-131.10. (Effective July 1, 2007) Exceptions.

Article 3.

Department of Health and Human Services.

Part 1. General Provisions.

143B-139.2. (Effective July 1, 2007) Secretary of Health and Human Services requests for grants-in-aid from non-State agencies.
143B-139.4. Department of Health and Human Services; authority to assist private nonprofit organizations.

Part 6. Social Services Commission.

Sec.
143B-153. Social Services Commission — creation, powers and duties.

Part 10B. Early Childhood Initiatives.

143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

Part 13A. Interagency Coordinating Council for Children with Disabilities from Birth to Five Years of Age.

143B-179.6. Interagency Coordinating Council for Children with Disabilities from Birth to Five Years of Age; agency cooperation.

Part 30. State Schools for Hearing-impaired Children.

143B-216.40. Establishment; operations.

Part 32. Heart Disease and Stroke Prevention Task Force.

143B-216.60. The Justus-Warren Heart Disease and Stroke Prevention Task Force.
143B-216.71, 143B-216.72. [Reserved.]

Part 34A. North Carolina Energy Assistance Act for Low-Income Persons.

143B-216.72A. Legislative findings and purpose.
143B-216.72B. Definitions.
143B-216.72C. The Office of Economic Opportunity designated agency; powers and duties.
143B-216.73, 143B-216.74. [Reserved.]

Part 35. Governor's Commission on Early Childhood Vision Care.

143B-216.75. Governor's Commission on Early Childhood Vision Care.

Article 6.

Department of Correction.

Part 1. General Provisions.

Part 3. Parole Commission.

143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.
143B-267. Post-Release Supervision and Parole Commission — members; se-

Sec.
lection; removal; chairman; compensation; quorum; services.

Article 7.

Department of Environment and Natural Resources.

Part 1. General Provisions.

143B-279.12. One-stop permits for certain environmental permits.

Part 5D. Marine Fisheries Commission.

143B-289.52. Marine Fisheries Commission — powers and duties.

Part 6. North Carolina Mining Commission.

143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services.
143B-292. North Carolina Mining Commission — officers.
143B-293. North Carolina Mining Commission — meetings.

Part 7. Soil and Water Conservation Commission.

143B-296. Soil and Water Conservation Commission — officers.
143B-297. Soil and Water Conservation Commission — meetings.

Part 8. Sedimentation Control Commission.

143B-299. Sedimentation Control Commission — members; selection; compensation; meetings.

Part 9. Water Pollution Control System Operators Certification Commission.

143B-300. Water Pollution Control System Operators Certification Commission — creation; powers and duties.

Part 13A. North Carolina Parks and Recreation Authority.

143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.

Article 8.

Department of Transportation.

Part 2. Board of Transportation.

143B-350. Board of Transportation — organization; powers and duties, etc.

Article 9.

Department of Administration.

Part 10B. Displaced Homemakers.

143B-394.4. Definitions.
143B-394.10. North Carolina Fund for Displaced Homemakers.

Part 10C. Domestic Violence Commission.

Sec.
143B-394.15. Commission established; purpose; membership; transaction of business.

Part 15. North Carolina State Commission of Indian Affairs.

143B-405. North Carolina State Commission of Indian Affairs — purposes for creation.

Part 22. North Carolina Agency for Public Telecommunications.

143B-426.11. (Effective July 1, 2007) Powers of Agency.
143B-426.14. (Effective July 1, 2007) Issuance of bonds.

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

Part 28. Office of the State Controller.

143B-426.39. (Effective July 1, 2007) Powers and duties of the State Controller.

Part 28B. Assignment of Claims Against the State.

143B-426.40A. (Effective July 1, 2007) Assignments of claims against State.

Part 28C. Accounting Systems.

143B-426.40G. (Effective July 1, 2007) Issuance of warrants upon State Treasurer; delivery of warrants and disbursements for non-State entities.
143B-426.40H. (Effective July 1, 2007) Annual financial information.

Article 10.

Department of Commerce.

Part 2. Economic Development.

143B-437.01. Industrial Development Fund.
143B-437.04. Community development block grants.
143B-437.08. Development tier designation.
143B-437.09. Urban progress zone designation.
143B-437.10. Agrarian growth zone designation.

Part 2G. Job Development Investment Grant Program.

Sec.
143B-437.51. Definitions.
143B-437.52. Job Development Investment Grant Program.
143B-437.53. Eligible projects.
143B-437.55. Applications; fees; reports; study.
143B-437.56. Calculation of minimum and maximum grants; factors considered.
143B-437.57. Community economic development agreement.
143B-437.58. Grant recipient to submit records.
143B-437.59. Failure to comply with agreement.
143B-437.60. Disbursement of grant.
143B-437.61. Transfer to Industrial Development Fund.
143B-437.62. Expiration.

Part 2H. One North Carolina Fund.

143B-437.71. One North Carolina Fund established as a special revenue fund.

Part 2J. Wine and Grape Growers Council.

Sec.
143B-437.90. North Carolina Wine and Grape Growers Council — Creation; powers and duties.
143B-437.91. North Carolina Wine and Grape Growers Council — Composition; terms; reimbursement.

Part 10. North Carolina State Ports Authority.

143B-454. Powers of Authority.
143B-456. Issuance of bonds and notes.

Part 19. Small Business Contractor Act. (Expired).

143B-472.85 through 143B-472.97. [Expired.]

Article 12.

Department of Juvenile Justice and Delinquency Prevention.

Part 2. General Provisions.

143B-516. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.

ARTICLE 1.

General Provisions.

Part 1. In General.

§ 143B-10. Powers and duties of heads of principal departments.

(a) Assignment of Functions. — Except as otherwise provided by this Chapter, the head of each principal State department may assign or reassign any function vested in him or in his department to any subordinate officer or employee of his department.

(b) Reorganization by Department Heads. — With the approval of the Governor, each head of a principal State department may establish or abolish within his department any division. Each head of a principal State department may establish or abolish within his department any other administrative unit to achieve economy and efficiency and in accordance with sound administrative principles, practices, and procedures except as otherwise provided by law. When any such act of the head of the principal State department affects existing law the provisions of Article III, Sec. 5(10) of the Constitution of North Carolina shall be followed.

Each Department Head shall report all reorganizations under this subsection to the President of the Senate, the Speaker of the House of Representatives, the Chairmen of the Appropriations Committees in the Senate and the House of Representatives, and the Fiscal Research Division of the Legislative Services Office, within 30 days after the reorganization if the General Assembly is in session, otherwise to the Joint Legislative Committee on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, within 30 days after the reorganization. The report shall include the rationale for the reorganization and any increased efficiency in operations expected from the reorganization.

(c) Department Staffs. — The head of each principal State department may establish necessary subordinate positions within his department, make appointments to those positions, and remove persons appointed to those positions, all within the limitations of appropriations and subject to the State Personnel Act. All employees within a principal State department shall be under the supervision, direction, and control of the head of that department. The head of each principal State department may establish or abolish positions, transfer officers and employees between positions, and change the duties, titles, and compensation of existing offices and positions as he deems necessary for the efficient functioning of the department, subject to the State Personnel Act and the limitations of available appropriations. For the purposes of the foregoing provisions, a member of a board, commission, council, committee, or other citizen group shall not be considered an "employee within a principal department."

(d) **(Effective until July 1, 2007)** Appointment of Committees or Councils. — The head of each principal department may create and appoint committees or councils to consult with and advise the department. The General Assembly declares its policy that insofar as feasible, such committees or councils shall consist of no more than 12 members, with not more than one from each congressional district. If any department head desires to vary this policy, he must make a request in writing to the Governor, stating the reasons for the request. The Governor may approve the request, but may only do so in writing. Copies of the request and approval shall be transmitted to the Advisory Budget Commission and to the Joint Legislative Commission on Governmental Operations. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5, when approved in advance by the Director of the Budget. Per diem, travel, and subsistence payments to members of the committees or councils created in connection with federal programs shall be paid from federal funds unless otherwise provided by law.

An annual report listing these committees or councils, the total membership on each, the cost in the last 12 months and the source of funding, and the title of the person who made the appointments shall be made to the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations by March 31 of each year.

Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission.

(d) **(Effective July 1, 2007)** Appointment of Committees or Councils. — The head of each principal department may create and appoint committees or councils to consult with and advise the department. The General Assembly declares its policy that insofar as feasible, such committees or councils shall consist of no more than 12 members, with not more than one from each congressional district. If any department head desires to vary this policy, he must make a request in writing to the Governor, stating the reasons for the request. The Governor may approve the request, but may only do so in writing. Copies of the request and approval shall be transmitted to the Joint Legislative Commission on Governmental Operations. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations

G.S. 143B-10(d) is set out twice. See note.

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and in accordance with the provisions of G.S. 138-5, when approved in advance by the Director of the Budget. Per diem, travel, and subsistence payments to members of the committees or councils created in connection with federal programs shall be paid from federal funds unless otherwise provided by law.

An annual report listing these committees or councils, the total membership on each, the cost in the last 12 months and the source of funding, and the title of the person who made the appointments shall be made to the Joint Legislative Commission on Governmental Operations by March 31 of each year.

(e) Departmental Management Functions. — All management functions of a principal State department shall be performed by or under the direction and supervision of the head of that principal State department. Management functions shall include planning, organizing, staffing, directing, coordinating, reporting, and budgeting.

(f) Custody of Records. — The head of a principal State department shall have legal custody of all public records as defined in G.S. 132-1.

(g) Budget Preparation. — The head of a principal State department shall be responsible for the preparation of and the presentation of the department budget request which shall include all funds requested and all receipts expected for all elements of the department.

(h) Plans and Reports. — Each principal State department shall submit to the Governor an annual plan of work for the next fiscal year prior to the beginning of that fiscal year. Each principal State department shall submit to the Governor an annual report covering programs and activities for each fiscal year. These plans of work and annual reports shall be made available to the General Assembly. These documents will serve as the base for the development of budgets for each principal State department of State government to be submitted to the Governor.

(i) Reports to Governor; Public Hearings. — Each head of a principal State department shall develop and report to the Governor legislative, budgetary, and administrative programs to accomplish comprehensive, long-range coordinated planning and policy formulation in the work of his department. To this end, the head of the department may hold public hearings, consult with and use the services of other State agencies, employ staff and consultants, and appoint advisory and technical committees to assist in the work.

(j) Departmental Rules and Policies. — The head of each principal State department and the Director of the Office of State Personnel may adopt:

(1) Rules consistent with law for the custody, use, and preservation of any public records, as defined in G.S. 132-1, which pertain to department business;

(2) Rules, approved by the Governor, to govern the management of the department, which shall include the functions of planning, organizing, staffing, directing, coordinating, reporting, budgeting, and budget preparation which affect private rights or procedures available to the public;

(3) Policies, consistent with law and with rules established by the Governor and with rules of the State Personnel Commission, which reflect internal management procedures within the department. These may include policies governing the conduct of employees of the department, the distribution and performance of business and internal management procedures which do not affect private rights or procedures available to the public and which are listed in (e) of this section. Policies establishing qualifications for employment shall be adopted and filed pursuant to Chapter 150B of the General Statutes; all other

policies under this subdivision shall not be adopted or filed pursuant to Chapter 150B of the General Statutes.

Rules adopted under (1) and (2) of this subsection shall be subject to the provisions of Chapter 150B of the General Statutes.

This subsection shall not be construed as a legislative grant of authority to an agency to make and promulgate rules concerning any policies and procedures other than as set forth herein. (1973, c. 476, s. 10; c. 1416, ss. 1, 2; 1977, 2nd Sess., c. 1219, s. 46; 1983, c. 76, ss. 1, 2; c. 641, s. 8; c. 717, s. 78; 1985 (Reg. Sess., 1986), c. 955, ss. 97, 98; 1987, c. 738, s. 147; c. 827, s. 1; 1991 (Reg. Sess., 1992), c. 1038, s. 15; 2006-203, s. 101.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 2007. The second version of subsection (d) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 101, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (d), deleted "to the Advisory Budget Commission and" following "shall be transmitted" in the fourth sentence of the first paragraph; deleted "the Advisory Budget Commission and" following "shall be made to" in the second paragraph; and deleted the last paragraph, which read: "Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission."

Part 3. Rules Review Commission.

§ 143B-30.1. Rules Review Commission created.

(a) The Rules Review Commission is created. The Commission shall consist of 10 members to be appointed by the General Assembly, five upon the recommendation of the President Pro Tempore of the Senate, and five upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

(b) In 1990, two of the appointments made by the General Assembly upon the recommendation of the President of the Senate shall expire June 30, 1991, and two shall expire June 30, 1992. In 1990, two of the appointments made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall expire June 30, 1992, and two shall expire June 30, 1993. Subsequent terms shall be for two years.

(c) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of six members of the Commission.

(d) Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars ($200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

(e) The Chief Administrative Law Judge, Office of Administrative Hearings, shall assign the staff and designate the Director of the Commission in accordance with G.S. 7A-760.

(f) The Commission shall prescribe procedures and forms to be used in submitting rules to the Commission for review. The Commission may have computer access to the North Carolina Administrative Code to enable the Commission and its staff to view and copy rules in the Code. (1985 (Reg. Sess., 1986), c. 1028, s. 32; 1987 (Reg. Sess., 1988), c. 1111, s. 2; 1989, c. 35, s. 2; 1989 (Reg. Sess., 1990), c. 1038, s. 18; 1991, c. 418, s. 11; 1991 (Reg. Sess., 1992), c. 1030, s. 43; 1995, c. 490, s. 43; 1997-495, s. 90(a), (b); 2004-124, s. 22A.1(b); 2006-66, s. 18.2(f); 2006-221, s. 20.)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 18.2(f), as added by Session Laws 2006-221, s. 20, effective July 1, 2006, in subsection (c), deleted the last sentence, which read: "The Chief Administrative Law Judge, Office of Administrative Hearings, shall be responsible for the hiring and supervision of the Director and staff to the Commission."; and rewrote subsection (e), which made employee appointments the responsibility of the Administrative Law Judge and made employees nonexempt from the State Personnel Act.

ARTICLE 2.

Department of Cultural Resources.

Part 1. General Provisions.

§ 143B-53. Organization of the Department.

The Department of Cultural Resources shall be organized initially to include the Art Commission, the Art Museum Building Commission, the North Carolina Historical Commission, the Tryon Palace Commission, the U.S.S. North Carolina Battleship Commission, the Sir Walter Raleigh Commission, the Executive Mansion Fine Arts Committee, the American Revolution Bicentennial Committee, the North Carolina Awards Committee, the America's Four Hundredth Anniversary Committee, the North Carolina Arts Council, the Public Librarian Certification Commission, the State Library Commission, the North Carolina Symphony Society, Inc., the North Carolina State Art Society, and the Division of the State Library, the Division of Archives and History, the Division of the Arts, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 476, s. 33; 1981, c. 918, s. 1; 2006-66, s. 22.22(e); 2006-221, s. 23.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 22.22(e), as added by Session Laws 2006-221, s. 23, effective July 1, 2006, substituted "North Carolina State Art Society" for "North Carolina Art Society."

§ 143B-53.1. (Effective July 1, 2007) Appropriation, allotment, and expenditure of funds for historic and archeological property.

The Department of Cultural Resources may not expend any State funds for the acquisition, preservation, restoration, or operation of historic or archeological real and personal property, and the Director of the Budget may not allot any appropriations to the Department of Cultural Resources for a particular historic site until (i) the property or properties shall have been approved for such purpose by the Department of Cultural Resources according to criteria adopted by the North Carolina Historical Commission, (ii) the report and recommendation of the North Carolina Historical Commission has been received and considered by the Department of Cultural Resources, and (iii) the Department of Cultural Resources has found that there is a feasible and practical method of providing funds for the acquisition, restoration and/or operation of such property. (1963, c. 210, s. 3; 1973, c. 476, s. 48; 1985 (Reg. Sess; 1986), c. 1014, s. 171(e); 2006-203, s. 7.)

Editor's Note. — This section was formerly G.S. 143-31.2. It was recodified pursuant to Session Laws 2006-203, s. 7, effective July 1, 2007.

§ 143B-53.2. Salaries, promotions, and leave of employees of the North Carolina Department of Cultural Resources.

(a) The employees listed in subsection (b) of this section are exempt from the classification and compensation rules established by the State Personnel Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; G.S. 126-4(6) only as it applies to promotion and transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1.

(b) The following employees of the Department of Cultural Resources are exempt as provided in subsection (c) of this section:

(1) Director and Associate Directors of the North Carolina Museum of History.
(2) Program Chiefs and Curators.
(3) Regional History Museum Administrators and Curators.
(4) North Carolina Symphony.
(5) Director, Associate Directors, and Curators of Tryon Palace.
(6) Director, Associate Directors, and Curators of Transportation Museum.
(7) Director and Associate Directors of the North Carolina Arts Council.
(8) Director, Assistant Directors, and Curators of the Division of State Historic Sites.

(c) The exemptions authorized by subsection (a) of this section and enumerated in subsection (b) of this section shall be used to develop organizational classification and compensation innovations that will result in the enhanced efficiency of operations. The Office of State Personnel shall assist the Secretary of the Department of Cultural Resources in the development and implementation of an organizational structure and human resources programs that make the most appropriate use of the exemptions, including (i) a system of job categories or descriptions tailored to the agency's needs; (ii) policies regarding paid time off for agency personnel and the voluntary sharing of such time off; and (iii) a system of uniform performance assessments for agency personnel tailored to the agency's needs. The Secretary of the Department of Cultural Resources may, under the supervision of the Office of State Personnel, develop and implement organizational classification and compensation innovations having the potential to benefit all State agencies. (2006-204, s. 3.)

Editor's Note. — Session Laws 2006-204, s. 3, enacted this section as G.S. 143B-54; it was recodified as G.S. 143B-53.2 at the direction of the Revisor of Statutes.

Session Laws 2006-204, s. 4, made this section effective August 8, 2006.

Part 8. U.S.S. North Carolina Battleship Commission.

§ 143B-74.2. U.S.S. North Carolina Battleship Commission — employees.

The Department of Cultural Resources is authorized to hire laborers, artisans, caretakers, stenographic and administrative employees, and other personnel, in accordance with the provisions of the State Personnel Act, as may be necessary in carrying out the purposes and provisions of this Article, and to maintain the ship in a clean, neat, and attractive condition satisfactory for exhibition to the public. The Commission shall appoint and fix the salary of an Executive Director and Assistant Director to serve at its pleasure. Employees shall be residents of the State of North Carolina except as may, in emergency conditions, be necessary for the procurement of specially trained or specially skilled employees. Any materials used for any purpose in maintaining and operating the ship for the purposes of this Article shall be, insofar as practicable, North Carolina materials. (1961, c. 158; 1975, c. 879, s. 46; 1977, c. 741, ss. 6, 8; 2006-204, s. 1.)

Effect of Amendments. — Session Laws 2006-204, s. 1, effective August 8, 2006, deleted "hereby" preceding "authorized to hire" in the first sentence, and added the second sentence.

Part 15. North Carolina State Art Society, Incorporated.

§ 143B-89. North Carolina State Art Society, Incorporated.

The North Carolina State Art Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 3 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina State Art Society, Incorporated, shall be a board of directors consisting of a minimum of 22 members as follows: the Governor, the Superintendent of Public Instruction, the State Treasurer, Secretary of Cultural Resources, and the Director of the North Carolina Museum of Art, who shall be ex officio members; six members who shall be named by the Governor; and a minimum of 12 directors who shall be chosen by members of the North Carolina State Art Society, Incorporated, in such manner and for such terms as that body shall determine. The six directors named by the Governor shall serve for terms of three years each. (1973, c. 476, s. 80; 1975, c. 386; 1977, c. 702, s. 3; 1985, c. 316; 2006-66, s. 22.22(f); 2006-221, s. 23.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 22.22(f), as added by Session Laws 2006-221, s. 23, effective July 1, 2006, substituted "North Carolina State Art Society" for "North Carolina Art Society" in the Part heading, in the section heading, and the first sentence.

Part 27A. Roanoke Island Commission.

§ 143B-131.2. Roanoke Island Commission — Purpose, powers, and duties.

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island. The Commission is further created to operate and administer the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, Ice Plant Island, and all other properties under the administration of the Department of Cultural Resources located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo, except as otherwise determined by the Commission.

(b) The Commission shall have the following powers and duties:

(1) To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and the U.S. 64/264 Bypass travel corridor on Roanoke Island and the grounds on Roanoke Island Festival Park.

(2) To operate the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.

(3) To supervise the development of Ice Plant Island and to manage future facilities.

(4) To advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.

(5) With the assistance of the Department of Cultural Resources, to identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and rules.

(6) To establish and collect a charge for admission to any property or event operated by the Commission.

(7) To solicit and accept gifts, grants, and donations.

(8) To cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Environment and Natural Resources, and other governmental agencies, officials, and entities, and provide them with assistance and advice.

(9) To adopt and enforce such bylaws, rules, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties. Chapter 150B of the General Statutes does not apply to the adoption of rules by the Commission.

(10) To establish and maintain a separate fund composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies. Funds appropriated to the Commission may be transferred to the Friends of Elizabeth II, Inc., a private, nonprofit corporation. The Friends of Elizabeth II, Inc., shall use the funds transferred to it to carry out the purposes of this Part.

(11) By cooperative arrangement with other agencies, groups, individuals, and other entities, to coordinate and schedule historical and cultural events on Roanoke Island.

(12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.

(13) To acquire real and personal property by purchase, gift, bequest, devise, and exchange.

(14) To administer the Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.

(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements to carry out the purposes of this Part and duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a); 1995, c. 507, s. 12.6(b); 1997-443, ss. 11A.119(a), 30.1; 1998-212, ss. 21.1(a), 21.1(b); 2006-259, s. 25.)

Effect of Amendments. — Session Laws 2006-259, s. 25, effective August 23, 2006, substituted "travel corridor" for "and N.C. 400 travel corridors" in the middle of subdivision (b)(1).

§ 143B-131.10. (Effective July 1, 2007) Exceptions.

Notwithstanding G.S. 143C-1-1, the following provisions do not apply to this Part: G.S. 143C-6-4, 143C-6-5, and 143C-6-9. (1995, c. 507, s. 12.6(c); 2006-203, s. 102.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 102, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-1-1" for "G.S. 143-28" near the beginning, and "G.S. 143C-6-4, 143C-6-5, and 143C-6-9" for "G.S. 143-16.3 and G.S. 143-23" at the end.

ARTICLE 3.

Department of Health and Human Services.

Part 1. General Provisions.

§ 143B-137.1. Department of Health and Human Services — duties.

Pilot Program to Evaluate Use of Telemonitoring Equipment in Home Care Services. — Session Laws 2006-66, s. 10.9C, provides: "The Department of Health and Human Services, Division of Medical Assistance, may implement a pilot program to evaluate the use of telemonitoring equipment in home care services and community-based long-term care services. The pilot program may be implemented by October 1, 2006, and shall evaluate the use of telemonitoring equipment as a tool to improve the health of homecare clients and community-based long-term care clients through increased monitoring and responsiveness, and resulting in increased stabilization rates. The evaluation shall include a representative number of older adults. Not later than July 1, 2007, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Fiscal Research Division, and the North Carolina Study Commission on Aging on the implementation of the pilot program and its findings and recommendations on the cost-effectiveness of telemonitoring and the benefits to individuals and health care providers." See also Session Laws 2006-194, s. 1, noted below, for similar provisions.

Session Laws 2006-194, s. 1, provides: "The Department of Health and Human Services, Division of Medical Assistance, shall implement a pilot program to evaluate the use of telemonitoring equipment in home and community based services. As determined by the Division, the Department shall provide remuneration to home care agencies and other providers for participation in the pilot program. The pilot program shall be implemented by October 1, 2006, and shall evaluate the use of telemonitoring equipment as a tool to improve the health of home and community based recipients through increased monitoring and responsiveness, and resulting in increased stabilization rates and decreased hospitalization rates. The evaluation must include a representative number of older adults. The Department shall report to the Study Commission on Aging by August 1, 2007. The report shall include findings and recommendations on the cost-effectiveness of telemonitoring and the benefits to individuals and health care providers." Session Laws 2006-66, s. 10.9C authorized a similar study.

Session Laws 2006-194, s. 2, provides: "Beginning January 1, 2007, and for a period of one year thereafter, the Department of Health and Human Services shall not issue any licenses for new home care agencies that intend to offer in-home aide services. This shall not restrict the Department from issuing licenses to certified home health agencies that intend to offer in-home aide services or to agencies that need a new license for an existing home care agency being acquired. This will allow the Department the time necessary to implement newly adopted home care rules."

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143B-138.1. Department of Health and Human Services — functions and organization.

Editor's Note. —

Session Laws 2006-108, s. 1, provides: "(a) The Department of Health and Human Services, Division of Aging and Adult Services and the Division of Medical Assistance, shall provide education, and training if necessary, to ensure that Community Alternatives Program (CAP) case managers are aware of adult day health services and that this option is being considered in all situations appropriate for the client.

"(b) The Department of Health and Human Services, Division of Aging and Adult Services, shall report on the status of the Partners in Caregiving Study recommendations.

"(c) The Department shall report the status of its activities under this section to the North Carolina Study Commission on Aging not later than July 30, 2006."

Session Laws 2006-109, s. 1, provides: "The Department of Health and Human Services shall examine the Community Alternatives Program for Disabled Adults (CAP/DA) in response to issues identified in the Medicaid Institutional Bias Study. The Department shall make an interim report of its findings to the North Carolina Study Commission on Aging on or before August 30, 2006, and shall submit its final report to the North Carolina Study Commission on Aging on or before August 30, 2007. The report shall include actions taken and planned by the Department in response to each bias identified in the study and shall include the following information:

"(1) Information on the utilization of CAP/DA slots, including a history of slots used per year over the last 10 years and the anticipated need during the next 10 years.

"(2) A description of the CAP/DA slot allocation formula; and a breakdown of slots by county, including the reallocation of any unused slots.

"(3) Strategies to ensure that the CAP/DA waiting list is managed as efficiently as possible, including consideration of whether there should be an expiration date tied to unused slots so that they may be reallocated in a timely manner to areas with waiting lists.

"(4) Implementation of a uniform screening/assessment tool and other strategies to ensure maximum operation efficiency and effectiveness for those individuals qualifying for CAP/DA services. This should include information on whether the lists should be prioritized by risk of institutionalization."

Session Laws 2006-110, s. 1, provides: "The Department of Health and Human Services shall collaborate with providers and advocates of home and community-based long-term care services to review the North Carolina Institutional Bias Study Report prepared by the Lewin Group and make recommendations on ways to address the biases identified in the report. The Department shall report its findings and recommendations to the North Carolina Study Commission on Aging on or before October 15, 2006."

Session Laws 2006-194, ss. 1 and 2, provide: "The Department of Health and Human Services, Division of medical Assistance, shall implement a pilot program to evaluate the use of telemonitoring equipment in home and community based services. As determined by the Division, the Department shall provide remuneration to home care agencies and other providers for participation in the pilot program. The pilot program shall be implemented by October 1, 2006, and shall evaluate the use of telemonitoring equipment as a tool to improve the health of home and community based recipients through increased monitoring and responsiveness, and resulting in increased stabilization rates and decreased hospitalization rates. The evaluation must include a representative number of older adults. The Department shall report to the Study commission on Aging by August 1, 2007. The report shall include findings and recommendations on the cost-effectiveness of telemonitoring and the benefits to individuals and health care providers.

"Beginning January 1, 2007, and for a period of one year thereafter, the Department of Health and Human Services shall not issue any licenses for new home care agencies that intend to offer in-home aide services. This shall not restrict the Department from issuing licenses to certified home health agencies that intend to offer in-home aide services or to agencies that need a new license for an existing home care agency being acquired. This will allow the Department the time necessary to implement newly adopted home care rules."

§ 143B-139.2. (Effective July 1, 2007) Secretary of Health and Human Services requests for grants-in-aid from non-State agencies.

It is the intent of this General Assembly that non-State health and human services agencies submit their appropriation requests for grants-in-aid through the Secretary of the Department of Health and Human Services for recommendations to the Governor and the General Assembly, and that agencies receiving these grants, at the request of the Secretary of the Department of Health and Human Services, provide a postaudit of their operations that has been done by a certified public accountant. (1975, c. 875, s. 16; 1989, c. 727, s. 173; 1997-443, s. 11A.102; 2006-203, s. 103.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 103, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "and the Advisory Budget Commission" following "to the Governor."

§ 143B-139.4. Department of Health and Human Services; authority to assist private nonprofit organizations.

(a) The Secretary of the Department of Health and Human Services may allow employees of the Department or provide other appropriate services to assist any private nonprofit organization which works directly with services or programs of the Department and whose sole purpose is to support the services and programs of the Department. Except as provided in G.S. 143B-164.18, a Department employee shall be allowed to work with an organization no more than 20 hours in any one month. These services are not subject to the provisions of Chapter 150B of the General Statutes.

(b) A private, nonprofit organization that receives employee assistance or other appropriate services in accordance with subsection (a) of this section, shall document all contributions received, including employee time, supplies, materials, equipment, and physical space. The documentation shall also provide an estimated value of all contributions received as well as any compensation paid to or bonuses received by State employees. This documentation shall be submitted annually to the Secretary of the Department of Health and Human Services in a format approved by the Secretary. Nonprofit organizations with less than five hundred thousand dollars ($500,000) in annual income shall submit an affidavit or annual audit from the chief officer of the organization providing and attesting to the financial condition of the organization and the expenditure of funds or use of State employee services or other State services, within six months from the nonprofit's fiscal year end. The board of directors of each private, nonprofit organization with an annual income of five hundred thousand dollars ($500,000) or more shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an annual audit of the financial accounts of the organization. The board of directors shall transmit to the Secretary of the Department a copy of the annual financial audit report of the private nonprofit organization. Nothing in this subsection shall be construed to relieve the private, nonprofit organization from other applicable reporting requirements established by law.

(c) Notwithstanding the limitations of subsection (a) of this section, the Secretary of the Department of Health and Human Services may assign employees of the Office of Rural Health and Resource Development to serve as in-kind match to nonprofit organizations working to establish health care programs that will improve health care access while controlling costs. (1987, c. 634, s. 1; 1997-443, s. 11A.118(a); 1999-237, s. 11.3; 2001-412, s. 3; 2006-66, s. 10.19.)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 10.19, effective July 1, 2006, in subsection (b), inserted the first four sentences, inserted "with an annual income of five hundred thousand dollars ($500,000) or more" in the fifth sentence, and added the last sentence.

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Health and Human Services with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Health and Human Services shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Health and Human Services as provided in Chapter 108A of the General Statutes of the State of North Carolina.

(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General

Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the Department of Juvenile Justice and Delinquency Prevention, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48;

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services. The Commission shall establish standardized rates for child caring institutions. In establishing standardized rates, the Commission shall consider the rate-setting recommendations provided by the Office of the State Auditor; and

e. For client assessment and independent case management pertaining to the functions of county departments of social services for public assistance programs authorized under paragraph a. of this subdivision.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;

b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, by promulgating rules and regulations in the following areas:

1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
3. Contracting for and purchasing services; and
4. Monitoring for effectiveness and compliance with State and federal law and regulations.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

- a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
- b. Repealed by Session Laws 1999-334, s. 3.5, effective October 1, 1999.
- c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
- d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;
- e. Repealed by Session Laws 1981, c. 562, s. 7.
- f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Health and Human Services.

(8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, rates or fees for:

- a. A fee schedule for the payment of the costs of necessary child care in licensed facilities and registered plans for minor children of needy families.
- b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and
- c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.
- d. Child support enforcement services as defined by G.S. 110-130.1. (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7; 1977, 2nd Sess., c. 1219, ss. 26, 27; 1981, c. 275, s. 5; c. 562, s. 7; c. 961, ss. 1-3; 1983, c. 278, ss. 1, 2; c. 527, s. 2; 1985, c. 206; c. 479, s. 96; c. 689, s. 29f; 1991, c. 462, s. 1; c. 636, s. 19(d); c. 689, s. 105; c. 761, s. 28; 1993, c. 553, s. 46; 1995, c. 449, s. 4; c. 535, s. 32; 1997-443,

s. 11A.118(a); 1997-456, s. 22; 1997-506, s. 55; 1998-202, s. 4(z); 1999-334, s. 3.5; 2000-111, s. 4; 2000-137, s. 4(dd); 2000-140, s. 99(a); 2006-66, s. 10.2(c).)

Editor's Note. —

Session Laws 2005-276, s. 10.76(c) and (d), provides: "(c) Until standardized rates are set, child caring institutions' maximum reimbursement shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services, Office of the Controller. In determining the maximum reimbursement, counties shall include county and IV-E reimbursements.

"(d) Minimum reimbursement for foster parents providing services through child caring institutions shall not be lower than the rates established by the General Assembly."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.2(d), provides: "The effective date for establishing standardized rates for child caring institutions in this State, as enacted in subsection (c) of this section [which amended G.S. 143-153(2)d.], shall be July 1, 2007."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 10.2(c), effective July 1, 2006, added the last two sentences in subdivision (2)d.; and made a minor stylistic change.

Part 10B. Early Childhood Initiatives.

§ 143B-168.10. Early childhood initiatives; findings.

Transfer More at Four program and Office of School Readiness to the Department of Public Instruction. — Session Laws 2006-66, s. 7.18(a), effective July 1, 2006, provides: "The More at Four program and the Office of School Readiness are transferred from the Office of the Governor to the Department of Public Instruction effective July 1, 2006. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6. The Office of School Readiness will provide oversight to the More at Four program and other related early childhood and prekindergarten education experiences. An Executive Director for the Office of School Readiness will be appointed by the State Board of Education."

Session Laws 2005-276, s. 10.67(b)-(f), as amended by Session Laws 2006-66, s. 7.18(b)-(h) provides:

"(b) The Department of Public Instruction shall continue the implementation of the 'More at Four' prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

"(1) A process and system for identifying children at risk of academic failure.

"(2) A process and system for identifying children who are not being served in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

"(3) A curriculum or several curricula that are research-based and/or built on sound instructional theory. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

"(4) An emphasis on ongoing family involvement with the prekindergarten program.

"(5) Evaluation of child progress through a statewide evaluation, as well as ongoing assessment of the children by teachers.

"(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

"(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

"(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services and the Department of Public Instruction. The Department may use the child care rating system to assist in determining program participation.

"(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.

"(10) A local contribution. Programs must demonstrate that they are accessing resources other than 'More at Four'.

"(11) A system of accountability.

"(12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services and the Department of Public Instruction shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

"(c) The Department of Public Instruction shall implement a plan to expand 'More at Four' program standards within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The 'NC Prekindergarten Program Standards' initiative shall recognize four- and five-star-rated centers that choose to apply and meet equivalent 'More at Four' program standards as high quality pre-k classrooms. Classrooms meeting these standards shall, have access to training and workshops for 'More at Four' programs. Whenever expansion slots are available, these classrooms shall have first priority to receive them.

"The 'More at Four' program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through January 31 of each year, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

"(d) The Department of Public Instruction shall submit a report by February 1, 2007, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, and the Fiscal Research Division. This final report shall include the following:

"(1) The number of children participating in the program.

"(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.

"(3) The expected expenditures for the programs and the source of the local match for each grantee.

"(4) The location of program sites and the corresponding number of children participating in the program at each site.

"(5) A comprehensive cost analysis of the program, including the cost per child served by the program.

"(6) The status of the NC Prekindergarten initiatives as outlined in this section.

"(e) For the 2005-2006 and the 2006-2007 fiscal years, the 'More at Four' program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors.

"(f) The 'More at Four' program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2005-2006 fiscal year. Support of existing four-year-old classrooms with 'More at Four' program funding shall be permitted when current funding is eliminated, reduced or redirected as required to meet other specified federal or State educational mandates."

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) The North Carolina Partnership shall have a Board of Directors consisting of the following 26 members:
   a. The Secretary of Health and Human Services, ex officio, or the Secretary's designee;
   b. Repealed by Session Laws 1997, c. 443, s. 11A.105.
   c. The Superintendent of Public Instruction, ex officio, or the Superintendent's designee;
   d. The President of the Community Colleges System, ex officio, or the President's designee;
   e. Three members of the public, including one child care provider, one other who is a parent, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate;
   f. Three members of the public, including one who is a parent, one other who is a representative of the faith community, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives;
   g. Twelve members, appointed by the Governor. Three of these 12 members shall be members of the party other than the Governor's party, appointed by the Governor. Seven of these 12 members shall be appointed as follows: one who is a child care provider, one other who is a pediatrician, one other who is a health care provider, one other who is a parent, one other who is a member of the business community, one other who is a member representing a philanthropic agency, and one other who is an early childhood educator;
   h. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.
   h1. The Chair of the North Carolina Partnership Board shall be appointed by the Governor;
   i. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.
   j. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the Senate;
   k. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the House of Representatives;
   l. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the Senate;
   m. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the House of Representatives; and
   n. The Director of the More at Four Pre-Kindergarten Program, or the Director's designee.

All members appointed to succeed the initial members and members appointed thereafter shall be appointed for three-year terms. Members may succeed themselves.

All appointed board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the North Carolina Partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the North Carolina Partnership regarding the disbursement of funds.

All ex officio members are voting members. Each ex officio member may be represented by a designee. These designees shall be voting members. No members of the General Assembly shall serve as members.

The North Carolina Partnership may establish a nominating committee and, in making their recommendations of members to be appointed by the General Assembly or by the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Majority Leader of the Senate, the Majority Leader of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Governor shall consult with and consider the recommendations of this nominating committee.

The North Carolina Partnership may establish a policy on members' attendance, which policy shall include provisions for reporting absences of at least three meetings immediately to the appropriate appointing authority.

Members who miss more than three consecutive meetings without excuse or members who vacate their membership shall be replaced by the appropriate appointing authority, and the replacing member shall serve either until the General Assembly and the Governor can appoint a successor or until the replaced member's term expires, whichever is earlier.

The North Carolina Partnership shall establish a policy on membership of the local boards. No member of the General Assembly shall serve as a member of a local board. Within these requirements for local board membership, the North Carolina Partnership shall allow local partnerships that are regional to have flexibility in the composition of their boards so that all counties in the region have adequate representation.

All appointed local board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the partnership regarding the disbursement of funds.

(2) The North Carolina Partnership and the local partnerships shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected and shall approve the ongoing plans, programs, and services developed and implemented by the local partnerships and hold the local partnerships accountable for the financial and programmatic integrity of the programs and services. The North Carolina Partnership may contract at the State level to obtain services or resources when the North Carolina Partnership determines it would be more efficient to do so.

In the event that the North Carolina Partnership determines that a local partnership is not fulfilling its mandate to provide programs and services designed to meet the developmental needs of children in order to prepare them to begin school healthy and ready to succeed and is not being accountable for the programmatic and fiscal integrity of its programs and services, the North Carolina Partnership may suspend all funds to the partnership until the partnership demonstrates that these defects are corrected. Further, at its discretion, the North Carolina Partnership may assume the managerial responsibilities for the partnership's programs and services until the North Carolina Partnership determines that it is appropriate to return the programs and services to the local partnership.

(4) The North Carolina Partnership shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of State funds appropriated to it and to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The North Carolina Partnership may contract with outside firms to develop and implement the standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the North Carolina Partnership pursuant to this subdivision.

(5) The North Carolina Partnership shall develop a regional accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of subsection (a) of this section. All local partnerships shall participate in the regional accounting and contract management system.

(6) The North Carolina Partnership shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.

(7) The North Carolina Partnership may adjust its allocations by up to ten percent (10%) on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local partnerships, the North Carolina Partnership shall consider whether the local partnerships are meeting the outcome goals and objectives of the North Carolina Partnership and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The North Carolina Partnership may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated "superior", "satisfactory", or "needs improvement".

The North Carolina Partnership may contract with outside firms to conduct the performance assessments of local partnerships.

(8) The North Carolina Partnership shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chosen from past board chairs or duly elected officers currently serving on local partnerships' board of directors at the time of appointment and shall serve three-year terms. Seven of the members shall be staff of local partnerships. Members shall be chosen by the Chair of the North Carolina Partnership from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the North Carolina Partnership and shall establish a

schedule of regular meetings. Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

(9) Repealed by Session Laws 2001-424, s. 21.75(h), effective July 1, 2001.

(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership.

(c) **(Effective until July 1, 2007)** The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars ($100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be audited as required by G.S. 143-6.1 [G.S. 143-6.2]. Organizations subject to G.S. 159-34 shall be exempt from this requirement.

(c) **(Effective July 1, 2007)** The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars ($100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be subject to the requirements of G.S. 143C-6.14. Organizations subject to G.S. 159-34 shall be exempt from this requirement.

(d) The North Carolina Partnership for Children, Inc., shall make a report no later than December 1 of each year to the General Assembly that shall include the following:

(1) A description of the program and significant services and initiatives.
(2) A history of Smart Start funding and the previous fiscal year's expenditures.
(3) The number of children served by type of service.
(4) The type and quantity of services provided.
(5) The results of the previous year's evaluations of the Initiatives or related programs and services.
(6) A description of significant policy and program changes.
(7) Any recommendations for legislative action.

(e) The North Carolina Partnership shall develop guidelines for local partnerships to follow in selecting capital projects to fund. The guidelines shall include assessing the community needs in relation to the quantity of child care centers, assessing the cost of purchasing or constructing new facilities as opposed to renovating existing facilities, and prioritizing capital needs such as construction, renovations, and playground equipment and other amenities.

(f) The North Carolina Partnership for Children, Inc., shall establish uniform guidelines and a reporting format for local partnerships to document the qualifying expenses occurring at the contractor level. Local partnerships shall monitor qualifying expenses to ensure they have occurred and meet the requirements prescribed in this subsection. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 324, s. 27A.1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(b); 1997-443, ss. 11.55(*l*), 11A.105; 1998-212, s. 12.37B(a), (b); 1999-84, s. 24; 1999-237, s. 11.48(a); 2000-67, s. 11.28(a); 2001-424, ss. 21.75(h), 21.75(i); 2002-126, s. 10.55(d); 2003-284, ss. 10.38(l), 10.38(m), 10.38(n); 2004-124, s. 10.37; 2006-203, s. 104; 2006-264, s. 1(b).)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 2007. The second version of subsection (c) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2006-264, s. 1(b), which amended this section by substituting "G.S. 143-6.2" for "G.S. 143-6.1" in the next-to-last sentence of subsection (c), was not given effect pursuant to Session Laws 2006-264, s. 1(c), which stated if House Bill 914, 2005 Regular Session [2006-203], becomes law, this section is repealed.

Effect of Amendments. —

Session Laws 2006-203, s. 104, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "subject to the requirements of G.S. 143C-6.14" for "audited as required by G.S. 143-6.1" near the end of subsection (c).

§ 143B-168.15. Use of State funds.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.37, provides: "Notwithstanding G.S. 143B-168.15(g), of the thirteen million five hundred thousand dollars ($13,500,000) appropriated in this act to the North Carolina Partnership for Children, Inc., for the 2006-2007 fiscal year for local partnership initiatives, a minimum of thirty percent (30%) of the allocation to each local partnership shall be used for child care subsidy. This percentage shall be in addition to the direct services allocation for the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Part 13A. Interagency Coordinating Council for Children with Disabilities from Birth to Five Years of Age.

§ 143B-179.5. Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families; establishment, composition, organization; duties, compensation, reporting.

Editor's Note. —

Session Laws 2006-69, s. 3(o), as amended by Session Laws 2006-259, s. 34, effective July 10, 2006, rewrote the Part heading, which formerly read: "Interagency Coordinating Council for Handicapped Children with Disabilities from Birth to Five Years of Age."

§ 143B-179.6. Interagency Coordinating Council for Children with Disabilities from Birth to Five Years of Age; agency cooperation.

All appropriate agencies, including the Department of Health and Human Services and the Department of Public Instruction, and other public and private service providers shall cooperate with the Council in carrying out its mandate. (1989 (Reg. Sess., 1990), c. 1003, s. 1; 1997-443, s. 11A.107; 2006-69, s. 3(p).)

Effect of Amendments. — Session Laws 2006-69, s. 3(p), effective July 10, 2006, substituted "Children with Disabilities" for "Handicapped Children" in the section catchline.

Part 30. State Schools for Hearing-impaired Children.

§ 143B-216.40. Establishment; operations.

There are established, and there shall be maintained, the following schools for the deaf: the Eastern North Carolina School for the Deaf at Wilson (K-12) and the North Carolina School for the Deaf at Morganton (K-12). The Department of Health and Human Services shall be responsible for the operation and maintenance of the schools. (1891, c. 399, s. 1; Rev., s. 4202; 1915, c. 14; C. S., s. 5888; 1957, c. 1433; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000; 1973, c. 476, s. 165; 1981, c. 423, s. 1; c. 635, s. 2; 1997-18, s. 12; 1997-443, s. 11A.118(a); 2001-424, s. 21.81(b); 2006-69, s. 3(q).)

Effect of Amendments. — Session Laws 2006-69, s. 3(q), effective July 10, 2006, deleted the former last paragraph which read: "The Board of Directors of the North Carolina Schools for the Deaf shall advise the Department and shall adopt rules and regulations concerning the schools as provided in G.S. 115C-124 and 143B-173."

Part 32. Heart Disease and Stroke Prevention Task Force.

§ 143B-216.60. The Justus-Warren Heart Disease and Stroke Prevention Task Force.

(a) The Justus-Warren Heart Disease and Stroke Prevention Task Force is created in the Department of Health and Human Services.

(b) The Task Force shall have 27 members. The Governor shall appoint the Chair, and the Vice-Chair shall be elected by the Task Force. The Director of the Department of Health and Human Services, the Director of the Division of Medical Assistance in the Department of Health and Human Services, and the Director of the Division of Aging in the Department of Health and Human Services, or their designees, shall be members of the Task Force. Appointments to the Task Force shall be made as follows:

(1) By the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as follows:
  a. Three members of the Senate;
  b. A heart attack survivor;
  c. A local health director;
  d. A certified health educator;
  e. A hospital administrator; and
  f. A representative of the North Carolina Association of Area Agencies on Aging.
(2) By the General Assembly upon the recommendation of the Speaker of the House of Representatives, as follows:
  a. Three members of the House of Representatives;
  b. A stroke survivor;
  c. A county commissioner;
  d. A licensed dietitian/nutritionist;
  e. A pharmacist; and
  f. A registered nurse.
(3) By the Governor, as follows:
  a. A practicing family physician, pediatrician, or internist;
  b. A president or chief executive officer of a business upon recommendation of a North Carolina wellness council which is a member of the Wellness Councils of America;
  c. A news director of a newspaper or television or radio station;

d. A volunteer of the North Carolina Affiliate of the American Heart Association;
e. A representative from the North Carolina Cooperative Extension Service;
f. A representative of the Governor's Council on Physical Fitness and Health; and
g. Two members at large.

(c) Each appointing authority shall assure insofar as possible that its appointees to the Task Force reflect the composition of the North Carolina population with regard to ethnic, racial, age, gender, and religious composition.

(d) The General Assembly and the Governor shall make their appointments to the Task Force not later than 30 days after the adjournment of the 1995 General Assembly, Regular Session 1995. A vacancy on the Task Force shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(e) The Task Force shall meet at least quarterly or more frequently at the call of the Chair.

(f) The Task Force Chair may establish committees for the purpose of making special studies pursuant to its duties, and may appoint non-Task Force members to serve on each committee as resource persons. Resource persons shall be voting members of the committees and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6. Committees may meet with the frequency needed to accomplish the purposes of this section.

(g) Members of the Task Force shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 120-3.1, 138-5 and 138-6, as applicable.

(h) A majority of the Task Force shall constitute a quorum for the transaction of its business.

(i) The Task Force may use funds allocated to it to establish two positions and for other expenditures needed to assist the Task Force in carrying out its duties.

(j) The Task Force has the following duties:

(1) To undertake a statistical and qualitative examination of the incidence of and causes of heart disease and stroke deaths and risks, including identification of subpopulations at highest risk for developing heart disease and stroke, and establish a profile of the heart disease and stroke burden in North Carolina.
(2) To publicize the profile of the heart disease and stroke burden and its preventability in North Carolina.
(3) To identify priority strategies which are effective in preventing and controlling risks for heart disease and stroke.
(4) To identify, examine limitations of, and recommend to the Governor and the General Assembly changes to existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.
(5) To determine and recommend to the Governor and the General Assembly the funding and strategies needed to enact new or to modify existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.
(6) To adopt and promote a statewide comprehensive Heart Disease and Stroke Prevention Plan to the general public, State and local elected officials, various public and private organizations and associations, businesses and industries, agencies, potential funders, and other community resources.
(7) To identify and facilitate specific commitments to help implement the Plan from the entities listed in subdivision (6) above.

(8) To facilitate coordination of and communication among State and local agencies and organizations regarding current or future involvement in achieving the aims of the Heart Disease and Stroke Prevention Plan.

(9) To receive and consider reports and testimony from individuals, local health departments, community-based organizations, voluntary health organizations, and other public and private organizations statewide, to learn more about their contributions to heart disease and stroke prevention, and their ideas for improving heart disease and stroke prevention in North Carolina.

(10) Establish and maintain a Stroke Advisory Council, which shall advise the Task Force regarding the development of a statewide system of stroke care that shall include, among other items, a system for identifying and disseminating information about the location of primary stroke centers.

(k) Notwithstanding Section 11.57 of S.L. 1999-237, the Task Force shall submit a final report to the Governor and the General Assembly by June 30, 2003, and a report to each subsequent regular legislative session within one week of its convening. (1995-507, s. 26.9; 1997-443, ss. 11A-122, 11A-123; 2001-424, s. 21.95; 2002-126, s. 10.45; 2003-284, s. 10.33B; 2006-197, s. 1.)

Editor's Note. —

Session Laws 2006-197, s. 2, provides: "The Justus-Warren Heart Disease and Stroke Prevention Task Force shall appoint the members of the Stroke Advisory Council as follows:

"(1) Four physicians, one upon the recommendation of the North Carolina Medical Society, one upon the recommendation of the North Carolina College of Emergency Physicians, one upon the recommendation of the Old North State Medical Society, and one who specializes in the treatment of strokes.

"(2) A hospital administrator recommended by the North Carolina Hospital Association.

"(3) A representative from the American Heart Association.

"(4) A representative from the North Carolina Association of Rescue and Emergency Medical Services.

"(5) A representative from the Area Health Education Centers (AHEC).

"(6) Other relevant experts as the Task Force deems beneficial to achieve the goals of the Stroke Advisory Council."

Session Laws 2006-197, s. 3, provides: "Not later than February 15, 2007, the Justus-Warren Heart Disease and Stroke Prevention Task Force shall report to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the findings and recommendations of the Stroke Advisory Council regarding the development of a statewide system of stroke care."

Session Laws 2006-197, s. 4, provides: "Notwithstanding any other provision of law to the contrary, the members of the Stroke Advisory Council shall, for the 2006-2007 fiscal year only, serve without compensation and without reimbursement for travel, food, and lodging."

Effect of Amendments. — Session Laws 2006-197, s. 1, effective August 3, 2006, added subdivision (j)(10).

§§ 143B-216.71, 143B-216.72: Reserved for future codification purposes.

Part 34A. North Carolina Energy Assistance Act for Low-Income Persons.

§ 143B-216.72A. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) Maintaining the general health, welfare, and prosperity of the people of this State requires that all citizens receive essential levels of heat and electric service regardless of their economic circumstances.

(2) Serving the State's most vulnerable citizens, its low-income elderly, persons with disabilities, families with children, high residential energy users, and households with a high-energy burden, is a priority.
(3) Conserving energy benefits all citizens and the environment.
(4) Ensuring proper payment to public utilities and other entities providing energy services actually rendered is a responsibility of this State.
(5) Declining federal low-income energy assistance funding necessitates a State response to ensure the continuity and further development of energy assistance and related policies and programs in this State.
(6) Current energy assistance policies and programs have benefited North Carolina citizens and should be continued with the modifications provided in this Part.

(b) The General Assembly declares that it is the policy of this State that weatherization, replacement of heating and cooling systems, and other energy-related assistance programs be utilized to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety. The State shall utilize all appropriate and available means to fund the Weatherization Assistance Program for Low-Income Families and the Heating/Air Repair and Replacement Program under G.S. 108A-70.30, and any other energy-related assistance program for low-income persons while, to the extent possible, identifying and utilizing sources of funding to achieve the objectives of this Part. (2006-206, s. 2.)

Editor's Note. — Session Laws 2006-206, s. 5, made this Part effective August 8, 2006.

§ 143B-216.72B. Definitions.

The following definitions apply to this Part:
(1) Applicant. — A member of the family residing in the dwelling unit, the owner, or designated agent of the owner of a dwelling unit applying for program services.
(2) Department. — The Department of Health and Human Services.
(3) Secretary. — The Secretary of Health and Human Services.
(4) Subgrantee. — An entity managing a weatherization project that receives a federal grant of funds awarded pursuant to 10 C.F.R. § 440 (1 January 2006 edition) from this State or other entity named in the Notification of Grant Award and otherwise referred to as the grantee.
(5) Weatherization. — The modification of homes and home heating and cooling systems to improve heating and cooling efficiency by caulking and weather stripping, as well as insulating ceilings, attics, walls, and floors. (2006-206, s. 2.)

§ 143B-216.72C. The Office of Economic Opportunity designated agency; powers and duties.

(a) The Office of Economic Opportunity of the Department shall administer the Weatherization Assistance Program for Low-Income Families established by 42 U.S.C. § 6861, et seq., and 42 U.S.C. § 7101, et seq.; the Heating/Air Repair and Replacement Program established by the Secretary under G.S. 108A-70.30; and any other energy-related assistance program for the benefit of low-income persons in existing housing. The Office of Economic Opportunity shall exercise the following powers and duties:
(1) Establish standards and criteria to carry out the provisions and purposes of this Part.

(2) Develop policy, criteria, and standards for receiving and processing applications for weatherization assistance.

(3) Make decisions and pursue appeals from decisions to accept or deny applications for weatherization, replacement of heating and cooling systems, and other energy-related assistance programs or otherwise participate in the State plan as a subgrantee or contractor.

(4) Adopt rules, consistent with the laws of this State, that may be required by the federal government for grants-in-aid for the Weatherization Assistance Program for Low-Income Families, the Heating/Air Repair and Replacement Program, or other energy-related assistance programs for the benefit of low-income residents in existing housing. This section shall be liberally construed in order that this State and its citizens may benefit from such grants-in-aid.

(5) Establish procedures for the submission of periodic reports by any community action agency or other agency or entity authorized to manage a weatherization project, replacement of heating and cooling systems, or other energy-related assistance project.

(6) Implement criteria for periodic review of weatherization, replacement of heating and cooling systems, or other energy-related programs in existing housing for low-income households.

(7) Solicit, accept, hold, and administer on behalf of this State any grants or bequests of money, securities, or property for the benefit of low-income residents in existing housing for use by the Department or other agencies in the administration of this Part.

(8) Create a Policy Advisory Council within the Office of Economic Opportunity that shall advise the Office of Economic Opportunity with respect to the development and implementation of a Weatherization Program for Low-Income Families, the Heating/Air Repair and Replacement Program, and any other energy-related assistance program for the benefit of low-income persons in existing housing.

(b) The Secretary shall have final decision-making authority with regard to all functions described in this Part. (2006-206, s. 2.)

§§ 143B-216.73, 143B-216.74: Reserved for future codification purposes.

Part 35. Governor's Commission on Early Childhood Vision Care.

§ 143B-216.75. Governor's Commission on Early Childhood Vision Care.

(a) There is established the Governor's Commission on Early Childhood Vision Care ("Commission"). The Commission shall be located in the Department of Health and Human Services for administrative and budgetary purposes only.

(b) The Commission shall consist of 10 members appointed as follows:

(1) Four optometrists, two ophthalmologists, and one general pediatrician or a family physician who provides services to children, each of whom is licensed to practice in this State, and one school nurse who is certified by the Prevent Blindness North Carolina Board, appointed by the Governor. Among the optometrists and ophthalmologists appointed by the Governor, one shall be a currently serving member of the Prevent Blindness North Carolina Board;

(2) One optometrist licensed to practice in this State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and

(3) One ophthalmologist licensed to practice in this State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The initial members appointed by the General Assembly shall each serve a one-year term. The initial members appointed by the Governor shall each serve a two-year term. Subsequent appointments shall be for three-year terms. Vacancies shall be filled by the original appointing authority.

(c) The Commission shall adopt rules to implement and administer the Governor's Vision Care Program established under this section. The rules shall address:

(1) Accepting and processing of applications by families for Program services.

(2) Establishment and verification of applicant income eligibility.

(3) Reimbursement to providers for services provided to eligible participants.

(4) Informing providers and the general public about the Program.

(5) Other duties necessary to implement the purposes and requirements of this section, including the development of a comprehensive eye examination transmittal form required under G.S. 130A-440.1.

The Commission shall develop alternative ways for providing services to children who qualify for the Program when funding for Program services has been exhausted.

The Commission shall prepare written information for providers conducting vision screening. The written information shall state, in effect: "Vision screening is not a substitute for a comprehensive eye examination." The Commission shall provide copies of this information to providers so that the provider may give a copy to the parent, guardian, or person standing in loco parentis.

(d) Commission members who are officials or employees of the State or local government agencies shall be paid per diem, subsistence, and travel expenses in accordance with G.S. 138-6. All other Commission members shall be paid in accordance with G.S. 138-5.

(e) The Chair of the Commission shall be an ophthalmologist or optometrist appointed by the Governor to serve alternately from year to year. The Commission shall meet upon the call of the Chair. A majority of the Commission members shall constitute a quorum. The Department of Health and Human Services shall provide meeting space and staff to assist the Commission. (2005-276, s. 10.59F(d); 2005-345, s. 20(d); 2006-240, s. 2(a).)

Governor's Vision Program Established. — Session Laws 2005-276, ss. 10.59F(a)-(c), as amended by Session Laws 2005-345, ss. 20(a) and (b), and as amended by Session Laws 2006-240, s. 2(d), provide: "(a) Program established. — There is established in the Department of Health and Human Services, Division of Public Health, the Governor's Vision Care Program. The purpose of the Program is to provide funds for early detection and correction of vision problems in children enrolling or enrolled in grades K through 3 who are eligible for services under the Program. These funds shall be allocated to reimburse optometrists and ophthalmologists licensed to practice in this State for the comprehensive eye examination, including necessary spectacles, provided to meet the requirements of G.S. 130A-440.1.

"(b) Repealed by Session Laws 2006-240, s. 2(d).

"(c) For the purposes of this section, 'comprehensive eye examination' means a complete and thorough examination of the eye and human visual system that includes an evaluation, determination, and diagnosis of:

"(1) Visual acuity at distance and near;

"(2) Alignment and ocular motility;

"(3) Binocular fusion abnormalities, including tracking;

"(4) Actual refractive errors, including verification by subject means;

"(5) Any color vision disorder;

"(6) Intraocular pressure as may be medically appropriate; and

"(7) Ocular health, including internal and external assessment.

"Routine screening that does not encompass all of the examination components listed in this subsection does not qualify for reimbursement from the Program."

Session Laws 2006-240, s. 2(b) and (c), provide: "(b) The Governor's Commission on Early Childhood Vision Care shall work with the Department of Public Instruction to establish procedures for identifying and referring children who need vision screening or a comprehensive eye examination as required by G.S. 143B-216.75.

"(c) The Department of Health and Human Services, Division of Public Health, shall study and determine the methodology of compiling data on the number of children who received comprehensive eye examinations, the types of problems found, and treatments provided, and shall report its findings to the Governor's Commission on Early Childhood Vision Care, the Joint Legislative Health Care Oversight Committee, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than July 1, 2007."

Session Laws 2006-240, s. 5, provides: "The Governor's Commission on Early Childhood Vision Care may adopt temporary rules in accordance with G.S. 150B-21.1 to implement this act."

Effect of Amendments. — Session Laws 2006-240, s. 2(a), effective August 13, 2006, in subsection (b), substituted "10 members" for "six members" in the middle of the introductory paragraph, and substituted the present provisions of subdivision (b)(1) for the former provisions which read: "Two optometrists and two ophthalmologists, each of whom is licensed to practice in this State, appointed by the Governor;"; in subsection (c), substituted "Establishment and verification" for "Verification" at the beginning of subdivision (c)(2), added ", including the development of a comprehensive eye examination transmittal form required under G.S. 130A-440.1" at the end of subdivision (c)(5), and added the last undesignated paragraph.

ARTICLE 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-262. Department of Correction — functions.

Editor's Note. — Session Laws 2005-276, s. 17.7, as amended by Session Laws 2006-66, s. 16.2, provides: "The Department of Correction may convert contract medical positions to permanent State medical positions if the Department can document in each request submitted to the Office of State Budget and Management that the total savings generated will exceed the total cost of the new positions.

"The Department of Correction shall report by April of each year to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on all conversions made pursuant to this section, by type of position and location, and on the savings generated."

Part 3. Parole Commission.

§ 143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

(a) There is hereby created a Post-Release Supervision and Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina, except that persons sentenced under Article 81B of Chapter 15A of the General Statutes are not eligible for parole. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency. The Commission shall also have authority to revoke and terminate persons on post-release supervision, as provided in Article 84A of Chapter 15A of the General Statutes.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to the Post-Release Supervision and Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the individual considered for work release or indeterminate-sentence release shall have been recommended for release by the Secretary of Correction or his designee.

(c) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. All rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Post-Release Supervision and Parole Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Correction.

(d) The Commission is authorized and empowered to impose as a condition of parole or post-release supervision that restitution or reparation be made by the prisoner in accordance with the provisions of G.S. 148-57.1. The Commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2.

(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by G.S. 14-208.42. The Commission may grant or deny those requests in compliance with G.S. 14-208.42. (1973, c. 1262, s. 8; 1975, c. 220; 1977, c. 614, s. 5; c. 732, s. 5; 1993, c. 538, s. 42; 1994, Ex. Sess., c. 21, s. 6; c. 24, s. 14(b); 2006-247, s. 15(i).)

Editor's Note. —

The references in subsection (e) to G.S. 14-208.42 were orginally G.S. 14-208.35. They have been changed at the direction of the Revisor of Statutes.

Session Laws 2006-247, s. 1(a) provides: "This act shall be known as 'An Act To Protect North Carolina's Children/Sex Offender Law Changes.'"

Session Laws 2006-247, s. 15(*l*), provides: "Unless otherwise provided in the section, this section is effective when it becomes law and applies to offenses committed on or after that date. This section also applies to any person sentenced to intermediate punishment on or after that date and to any person released from prison by parole or post-release supervision on or after that date. This section also applies to any person who completes his or her sentence on or after the effective date of this section who is not on post-release supervision or parole. However, the requirement to enroll in a satellite-based program is not mandatory until January 1, 2007, when the program is established."

Session Laws 2006-247, s. 21, contains a severability clause.

Session Laws 2006-247, s. 22, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-247, s. 15(i), effective August 16, 2006, and applicable to offenses committed on or after that date, added subsection (e).

§ 143B-267. Post-Release Supervision and Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

Effective August 1, 2005, the Post-Release Supervision and Parole Commission shall consist of one full-time member and two half-time members. The three members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of any members serving on the Commission on June 30, 2005, shall expire on that date. The terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a member of the Commission to serve as chair of the Commission at the pleasure of the Governor.

The granting, denying, revoking, or rescinding of parole, the authorization of work-release privileges to a prisoner, or any other matters of business coming before the Commission for consideration and action shall be decided by majority vote of the full Commission.

The members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6. Notwithstanding any other provision of law, the half-time members of the Commission shall not be subject to the provisions of G.S. 135-3(8)(c).

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1; 1979, c. 2; 1983, c. 709, s. 3; c. 717, s. 80; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1993, c. 337, s. 1; c. 538, s. 43; 1994, Ex. Sess., c. 14, s. 63; c. 24, s. 14(b); 1999-237, s. 18.2; 2005-276, s. 17.25(a); 2006-264, s. 89(a).)

Effect of Amendments. —
Session Laws 2006-264, s. 89(a), effective August 27, 2006, added the last sentence in the fourth paragraph.

Article 6A.

North Carolina State-County Criminal Justice Partnership Act.

§ 143B-273.15. Funding formula.

Editor's Note. —
Session Laws 2005-276, s. 17.23(h), as amended by 2006-66, s. 16.11, which was added by 2006-221, s. 16, provides: "For the 2005-2006 fiscal year, notwithstanding the formula in G.S. 143B-273.15, each county's formula allocation shall be capped at no less than ninety-nine percent (99%) and no greater than one hundred twenty percent (120%) of the funds allocated to that county for the 2004-2005 fiscal year. Funding caps shall be accomplished by the redistribution of three hundred forty-four thousand four hundred ninety-one dollars ($344,491) that was spent on case management services in day reporting centers prior to 2002. No funds shall be used to fund programs that did not participate in the Criminal Justice Partnership Program in fiscal year 2004-2005.

"For the 2006-2007 fiscal year, notwithstanding the formula in G.S. 143B-273.15, each county's formula allocation shall be capped at no less than ninety-five percent (95%) and no greater than one hundred twenty percent (120%) of the funds allocated to that county for the 2004-2005 fiscal year."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

ARTICLE 7.

Department of Environment and Natural Resources.

Part 1. General Provisions.

§ 143B-279.12. One-stop permits for certain environmental permits.

(a) The Department of Environment and Natural Resources shall establish a one-stop environmental permit application assistance and tracking system program for all its regional offices. The Department shall provide to each person who submits an application for any environmental permit subject to this section to any regional office a time frame within which that applicant may expect a final decision regarding the issuance or denial of the permit. The Department shall identify the environmental permits that are subject to this section. The procedure regulating the time frame estimates and sanction for failing to honor the time frame shall be as set out in subsections (b) and (c) of this section.

(b) Upon receipt of a complete application for an environmental permit, the Department of Environment and Natural Resources shall provide to the applicant a good faith estimate of the date by which the Department expects to make the final decision of whether to issue or deny the permit.

(c) Unless otherwise provided by law, when an applicant has provided to the Department of Environment and Natural Resources the information and documentation required and requested by the Department and the Department fails to issue or deny the permit within 60 days of the date projected by the Department for the final decision of whether to issue or deny the permit, the permit shall be automatically granted to the applicant. This subsection does not apply when an applicant submits a substantial amendment to its application after the Department has provided the applicant the projected time frame as required by this section. This subsection does not apply when an applicant agrees to receive a final decision from the Department more than 60 days from the date projected by the Department under subsection (b) of this section.

(d) The Department of Environment and Natural Resources shall track the time required to process each complete environmental permit application that is subject to this section. The Department shall compare the time in which the permit was issued or denied with the projected time frame provided to the applicant by the Department as required by this section. The Department shall identify each permit that was issued or denied more than 90 days after receipt of a complete application by the Department and shall document the reasons for the delayed action.

(e) No later than 1 March of each year, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission the number of environmental permits subject to this section that took more than 90 days to issue or deny, the types of permits those were, the reasons for the extended processing time of those permits, and how the time within which the permit was actually issued or denied compared with the projected time frame provided to the applicant by the Department as required by this section. Based on the data gathered under this subsection, the Department shall include in its annual report recommendations regarding permit time frames for all major permits issued by the Department.

(f) The Department may adopt temporary rules to implement this section. (2004-124, s. 12.12(a); 2006-79, s. 14.)

Effect of Amendments. — Session Laws 2006-79, s. 14, effective July 10, 2006, in subsection (e), substituted "1 March of each year" for "October 1, 2004, and annually thereafter", deleted "House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources, the" preceding "Fiscal Research" and made a minor stylistic change.

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission — creation; powers and duties.

Drinking Water Supply Reservoirs. — Session Laws 2005-190, ss. 1 to 3.(c) and 3.(e) to 4, as amended by Session Laws 2006-259, s. 31(a)-(c), provide: "1. Legislative findings. — The General Assembly finds that:

"(1) Drinking water supply reservoirs are an essential source of water needed to meet municipal, industrial, and agricultural needs.

"(2) Drinking water supply reservoirs provide recreational opportunities and wildlife habitat and, if properly managed, improve water quality.

"(3) Management and protection of the quality and quantity of water in drinking water supply reservoirs are essential to the economic vitality of North Carolina.

"(4) Excessive nutrients are a major source of impairment of water quality in drinking water supply reservoirs.

"(5) It would be beneficial for the State to study the condition of drinking water supply reservoirs and to develop nutrient control criteria to prevent drinking water supply reservoirs from becoming impaired.

"(6) It would be beneficial for the State to develop calibrated nutrient response models and nutrient management strategies to ensure that drinking water supply reservoirs that are showing evidence of impairment are protected, as envisioned by Part 1 of Article 21 of Chapter 143 of the General Statutes and S.L. 1997-458, the Clean Water Responsibility and Environmentally Sound Policy Act.

"2.(a) Study of drinking water supply reservoirs. — The Environmental Management Commission shall study the water quality in the drinking water supply reservoirs in the State to determine whether the reservoirs meet current water quality standards. The Commission shall analyze existing data and report its findings and recommendations to the Environmental Review Commission by 1 May 2006.

"2.(b) Nutrient control criteria. — Based on the results of the study of drinking water supply reservoirs and an evaluation of current water quality standards, the Environmental Management Commission shall identify any nutrient control criteria necessary to prevent excess nutrient loading in each drinking water supply reservoir in order to protect public health and other designated uses by 1 January 2009. The Commission shall adopt final nutrient control criteria for each drinking water supply reservoir by 1 May 2010. If the Commission finds that the nutrient control criteria for any drinking water supply reservoir are not being achieved, the Commission shall develop and implement a plan for enhanced water quality monitoring in that drinking water supply reservoir within one year of the determination. The Commission shall report its progress in implementing this section, including its findings and recommendations, to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b).

"3.(a) Applicability of section to certain reservoirs. — This section applies only to drinking water supply reservoirs that meet all of the following criteria as of 1 July 2005:

"(1) The reservoir serves a population greater than 300,000 persons.

"(2) The Environmental Management Commission has classified all or any part of the water in the reservoir as a nutrient sensitive water (NSW).

"(3) Water quality monitoring data indicates that water quality in the reservoir violates the chlorophyll A standard.

"(4) The Division of Water Quality of the Department of Environment and Natural Resources has not prepared or updated a calibrated nutrient response model for the reservoir since 1 July 2002.

"3.(b) Temporary limitation on increased nutrient loading. — If the Environmental Management Commission determines either that water quality in all or in any part of a drinking water supply reservoir to which this section applies does not meet current water quality standards or that it is likely that water quality will not meet water quality standards at any time prior to 1 July 2010, the Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into that reservoir. This limitation on new or increased nutrient loading allocation shall not be construed to prohibit a person who holds a permit for a wastewater discharge into a drinking water supply reservoir from purchasing a nutrient loading allocation from another person who holds a permit for a wastewater discharge into the same drinking water supply reservoir. This subsection expires with respect to a drinking water supply reservoir when permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective.

"3.(c) Nutrient management strategy. — The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July 2009. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy.

"3.(e) Implementation; rulemaking. — The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July 2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective.

"3.(f) Reports. — The Environmental Management Commission shall report its progress in implementing this section to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b).

"4. Other drinking water supply reservoirs. — The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

§ 143B-282.1. Environmental Management Commission — quasi-judicial powers; procedures.

CASE NOTES

Multiple Fines. — Where a contractor had nine open burning piles within 1,000 feet from a dwelling, the North Carolina Department of Environment and Natural Resources did not violate the contractor's equal protection rights by imposing a penalty for each of the nine piles, because the imposition of multiple fines for multiple open burning piles was rationally related to a legitimate government purpose. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005).

Part 5D. Marine Fisheries Commission.

§ 143B-289.52. Marine Fisheries Commission — powers and duties.

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

  a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
  b. Seasons for taking fish.
  c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221.1.

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(13) To adopt rules to define fishing gear as either recreational gear or commercial gear.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(d1) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. If the Commission regulates participation in a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery.

(e) The Commission may adopt rules to implement or comply with a fishery management plan adopted by the Atlantic States Marine Fisheries Commission or adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan.

(f) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(g) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

(h) Social security numbers and identifying information obtained by the Commission or the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of this subsection, "identifying information" also includes a person's mailing address, residence address, date of birth, and telephone number.

(i) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission. (1997-400, ss. 2.1, 2.2; 1997-443, s. 11A.123; 1998-217, s. 18(a); 1998-225, ss. 1.3, 1.4, 1.5; 2001-474, s. 32; 2003-154, s. 3; 2004-187, ss. 7, 8; 2006-255, ss. 11.2, 12.)

Effect of Amendments. —

Session Laws 2006-255, ss. 11.2 and 12, effective August 23, 2006, rewrote subsection (h) which read: "Neither the Commission nor the Department may disclose personal information provided by an applicant for a license issued under Article 14A or 14B of Chapter 113 of the General Statutes" and added subsection (i).

Part 6. North Carolina Mining Commission.

§ 143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services.

(a) Members, Selection. — The North Carolina Mining Commission shall consist of nine members appointed by the Governor under a specified subdivision of this subsection as follows:

(1) One member who is the chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio.
(2) One member who is a representative of the mining industry.
(3) One member who is a representative of the mining industry.
(4) One member who is a representative of the mining industry.
(5) One member who is a representative of nongovernmental conservation interests.
(6) One member who is a representative of nongovernmental conservation interests.
(7) One member who is a representative of nongovernmental conservation interests.
(8) One who, at the time of the appointment to the Mining Commission, is

a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

(b) Terms. — The term of office of a member of the Commission is six years. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4), (7), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. — An appointment to fill a vacancy shall be for the unexpired balance of the term.

(d) Removal. — The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13.

(e) Compensation. — The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) Quorum. — A majority of the Commission shall constitute a quorum for the transaction of business.

(g) Staff. — All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources. (1973, c. 1262, s. 30; 1997-496, s. 8; 2006-79, ss. 3, 4.)

Effect of Amendments. — Session Laws 2006-79, ss. 3 and 4, effective July 10, 2006, substituted "chair" for "chairman" in subdivision (a)(1); and substituted "Secretary of Environment and Natural Resources" for "Secretary of the Department" in subsection (g).

§ 143B-292. North Carolina Mining Commission — officers.

The North Carolina Mining Commission shall have a chair and a vice-chair. The chair shall be designated by the Governor from among the members of the Commission to serve as chair at the pleasure of the Governor. The vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of the vice-chair's regularly appointed term. (1973, c. 1262, s. 31; 2006-79, s. 5.)

Effect of Amendments. — Session Laws 2006-79, s. 5, effective July 10, 2006, substituted "chair" for "chairman" throughout the section, "chair at the pleasure of the Governor" for "chairman at his pleasure" in the first sentence, and "the vice-chair's" for "his" in the second sentence.

§ 143B-293. North Carolina Mining Commission — meetings.

The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chair or upon the written request of at least five members. (1973, c. 1262, s. 32; 2006-79, s. 6.)

Effect of Amendments. — Session Laws 2006-79, s. 6, effective July 10, 2006, substituted "chair" for "chairman."

Part 7. Soil and Water Conservation Commission.

§ 143B-296. Soil and Water Conservation Commission — officers.

The Soil and Water Conservation Commission shall have a chair and a vice-chair. The chair shall be designated by the Governor from among the members of the Commission to serve as chair at the pleasure of the Governor. The vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of the vice-chair's regularly appointed term. (1973, c. 1262, s. 36; 2006-79, s. 7.)

Effect of Amendments. — Session Laws 2006-79, s. 7, effective July 10, 2006, substituted "chair" for "chairman" throughout the section, and "expiration of the vice-chair's" for "expiration of his" near the end of the last sentence.

§ 143B-297. Soil and Water Conservation Commission — meetings.

The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the chair or upon the written request of at least four members. (1973, c. 1262, s. 37; 2006-79, s. 8.)

Effect of Amendments. — Session Laws 2006-79, s. 8, effective July 10, 2006, substituted "chair" for "chairman."

Part 8. Sedimentation Control Commission.

§ 143B-299. Sedimentation Control Commission — members; selection; compensation; meetings.

(a) Creation; Membership. — There is hereby created in the Department of Environment and Natural Resources the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

(1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;
(2) A person to be nominated by the Board of the North Carolina Home Builders Association;
(3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;
(4) The president, vice-president, or general counsel of a North Carolina public utility company;

(5) The Director of the North Carolina Water Resources Research Institute;
(6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);
(7) A member of the State Soil and Water Conservation Commission;
(8) A member of the Environmental Management Commission;
(9) A soil scientist from the faculty of North Carolina State University;
(10) Two persons who shall be representatives of nongovernmental conservation interests; and
(11) A professional engineer registered under the provisions of Chapter 89C of the General Statutes nominated by the Professional Engineers of North Carolina, Inc.

(b) Appointment. — The Commission members shall be appointed by the Governor. All Commission members, except the person appointed under subdivision (5) of subsection (a) of this section, shall serve staggered terms of three years and until their successors are appointed and duly qualified. The person appointed under subdivision (5) of subsection (a) of this section shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as the person continues as Director of the Water Resources Research Institute. The terms of members appointed under subdivisions (2), (4), (7), and (8) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The terms of members appointed under subdivisions (1), (3), and (10) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (6), (9), and (11) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Except for the person appointed under subdivision (5) of subsection (a) of this section, no member of the Commission shall serve more than two complete consecutive three-year terms. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, or because they no longer possess the required qualifications for membership. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(b1) Chair. — The Governor shall designate a member of the Commission to serve as chair.

(c) Compensation. — The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. — The Commission shall meet at the call of the chair and shall hold special meetings at the call of a majority of the members. (1973, c. 1262, s. 40; 1977, c. 771, s. 4; 1981, c. 248, ss. 1, 2; 1989, c. 727, s. 218(138); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 551, s. 1; 1997-443, s. 11A.119(a); 2006-79, s. 9.)

Effect of Amendments. — Session Laws 2006-79, s. 9, effective July 10, 2006, rewrote subsection (b); and substituted "chair" for "chairman" in subsections (b1) and (d).

Part 9. Water Pollution Control System Operators Certification Commission.

§ 143B-300. Water Pollution Control System Operators Certification Commission — creation; powers and duties.

(a) There is hereby created the Water Pollution Control System Operators Certification Commission to be located in the Department of Environment and Natural Resources. The Commission shall adopt rules with respect to the certification of water pollution control system operators as provided by Article 3 of Chapter 90A of the General Statutes.

(b) The Commission shall adopt such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for programs concerned with the certification of water pollution control system operators which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(c) The Commission may by rule delegate any of its powers, other than the power to adopt rules, to the Secretary of Environment and Natural Resources or the Secretary's designee. (1973, c. 1262, s. 42; 1977, c. 771, s. 4; 1989, c. 727, s. 195; 1991, c. 623, s. 15; 1997-443, s. 11A.119(a); 2006-79, s. 10.)

Effect of Amendments. — Session Laws 2006-79, s. 10, effective July 10, 2006, substituted "the Secretary's designee" for "his designee" at the end of subsection (c).

Part 13A. North Carolina Parks and Recreation Authority.

§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.

(a) Membership. — The North Carolina Parks and Recreation Authority shall consist of 11 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. In making appointments, each appointing authority shall specify under which subdivision of this subsection the person is appointed. Members shall be appointed as follows:

(1) One member appointed by the Governor.
(2) One member appointed by the Governor.
(3) One member appointed by the Governor.
(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.
(5) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.
(6) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(8) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(9) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(10) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(11) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(b) Terms. — Members shall serve staggered terms of office of three years. Members shall serve no more than two consecutive three-year terms. After serving two consecutive three-year terms, a member is not eligible for appointment to the Authority for at least one year after the expiration date of that member's most recent term. Upon the expiration of a three-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The terms of members appointed under subdivision (1), (5), (7), or (9) of subsection (a) of this section shall expire on July 1 of years that are evenly divisible by three. The terms of members appointed under subdivision (2), (4), (8), or (11) of subsection (a) of this section shall expire on July 1 of years that follow by one year those years that are evenly divisible by three. The terms of members appointed under subdivision (3), (6), or (10) of subsection (a) of this section shall expire on July 1 of years that precede by one year those years that are evenly divisible by three.

(c) Chair. — The Governor shall appoint one member of the North Carolina Parks and Recreation Authority to serve as Chair.

(d) Vacancies. — A vacancy on the North Carolina Parks and Recreation Authority shall be filled by the appointing authority responsible for making the appointment to that position as provided in subsection (a) of this section. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(e) **(Effective until July 1, 2007)** Removal. — The Governor may remove, as provided in G.S. 143-13, any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

(e) **(Effective July 1, 2007)** Removal. — The Governor may remove, as provided in Article 10 of Chapter 143C of the General Statutes any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

(f) Compensation. — The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(g) Meetings. — The North Carolina Parks and Recreation Authority shall meet at least quarterly at a time and place designated by the Chair.

(h) Quorum. — A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

(i) Staff. — All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment and Natural Resources. (1995, c. 456, s. 1; 1996, 2nd Ex. Sess., c. 15, s. 16.1; 1997-443, s. 11A.119(a); 1997-496, s. 10; 2001-424, s. 19.3(a); 2006-203, s. 105.)

Subsection (e) Set Out Twice. — The first version of subsection (e) set out above is effective until July 1, 2007. The second version of subsection (e) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 105, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "Article 10 of Chapter 143C of the General Statutes" for "G.S. 143-13" in subsection (e).

Article 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-346. Department of Transportation — purpose and functions.

CASE NOTES

Standard of Care Not Established. — Administrator's wrongful death claim against the state department of transportation arising from a fatal traffic accident caused by water on a highway was properly dismissed where the adminstrator's evidence failed to establish the department's standard of care, and failed to show that any failure by the department proximately caused the accident. Drewry v. N.C. DOT, 168 N.C. App. 332, 607 S.E.2d 342, 2005 N.C. App. LEXIS 262 (2005), cert. denied, 359 N.C. 410, 612 S.E.2d 318 (2005).

Part 2. Board of Transportation.

§ 143B-350. Board of Transportation — organization; powers and duties, etc.

(a) Board of Transportation. — There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole. The diversity and size of the State require that regional differences be considered by Board members as they develop transportation policy and projects for the benefit of the citizens of the State.

(b) Membership of the Board. —

(1) Number, appointment. — The Board of Transportation shall have 19 voting members. Fourteen of the members shall be division members appointed by the Governor. Five shall be at-large members appointed by the Governor. At least three members of the Board shall be registered voters of a political party other than the political party of the Governor. The Secretary of Transportation shall serve as an ex officio nonvoting member of the Board. No more than two members of the Board may reside in the same highway division.

(2) Division members. — One member shall be appointed from and be a resident of each of the 14 highway divisions. The Governor, in selecting division members, shall consider for appointment persons

suggested by the Transportation Advisory Committees located within each division. Division members shall direct their primary effort to developing transportation policy and addressing transportation problems in the region they represent. Division members shall regularly consult with and consider the views of local government units and Transportation Advisory Committees in the region they represent.

(3) At-large members. — Five members shall be appointed by the Governor from the State at large. At-large members appointed pursuant to this subdivision shall develop transportation policy and address transportation problems with a statewide perspective. At-large members appointed under this subdivision shall possess the following qualifications:

a. One at-large member shall be a person with expertise in environmental issues affecting the State;

b. One at-large member shall be a person familiar with the State ports and aviation issues;

c. One at-large member shall be a person residing in a rural area of the State with broad knowledge of and experience in transportation issues affecting rural areas;

d. One at-large member shall be a person residing in an urban area with broad knowledge of and expertise in mass transit;

e. One at-large member shall be a person with broad knowledge of and expertise in government-related finance and accounting.

(c) Staggered Terms. — The terms of all Board members serving on the Board prior to January 15, 2001, shall expire on January 14, 2001. A new board of 19 members shall be appointed with terms beginning on January 15, 2001. The Board shall serve the following terms: division members representing divisions 1, 3, 5, 7, 9, 11, and 13 and the three at-large members filling the positions designated in sub-subdivisions (b)(3)a., b., and e. of this section shall serve four-year terms beginning on January 15, 2001, and four-year terms thereafter; and division members representing divisions 2, 4, 6, 8, 10, 12, and 14 and the two at-large members filling the positions designated in sub-subdivisions (b)(3)c. and d. of this section shall serve two-year terms beginning January 15, 2001, and four-year terms thereafter.

(d) Holdover Terms; Vacancies; Removal. — Members shall continue to serve until their successors are appointed. The Governor may appoint a member to serve out the unexpired term of any Board member. The Governor may remove any member of the Board for any cause the Governor finds sufficient. The Governor shall remove any member of the Board upon conviction of a felony, conviction of any offense involving a violation of the Board member's official duties, or for a violation of the provisions of subsections (i), (j), and (k) of this section or any other code of ethics applicable to members of the Board as determined by the Governor or the Governor's designee.

(e) Organization and Meetings of the Board. — Within 60 days after January 15, 2001, and thereafter within 60 days following the beginning of the regular term of the Governor, the Governor or his designee shall call the Board into session. The Board shall select a chair and vice-chair from among its membership for two-year terms. The Board may select a chair or vice-chair for one additional two-year term. The Board of Transportation shall meet once in each 60 days at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the chairman or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business.

Board members shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(f) Duties of the Board. — The Board of Transportation has the following duties and powers:

(1) To formulate policies and priorities for all modes of transportation under the Department of Transportation.

(2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department.

(3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various alternatives.

(4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects included in the Program, a list of any changes made from the previous year's Program, and the reasons for the changes.

(5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it.

(6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department.

(7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available.

(8) To approve all highway construction programs.

(9) To approve all highway construction projects and construction plans for the construction of projects.

(10) To review all statewide maintenance functions.

(11) To award all highway construction contracts.

(12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain.

(12a) To approve partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in this State.

(13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

(f1) Municipal Participation. — The ability of a municipality to pay in part or whole for any transportation improvement project shall not be a factor considered by the Board of Transportation in its development and approval of a schedule of major State highway system improvement projects to be undertaken by the Department under G.S. 143B-350(f)(4).

(f2) Approval of aircraft and ferry purposes. — Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General

Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations.

(g) Delegation of Board Duties. — The Board of Transportation may, in its discretion, delegate to the Secretary of Transportation the authority:

(1) To approve all highway construction projects and construction plans for the construction of projects;
(2) To award all highway construction contracts;
(3) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The Secretary may, in turn, subdelegate these duties and powers.

(h) Consultation of Board Members. — Each member of the Board of Transportation who is appointed to represent a transportation engineering division or who resides in a division shall be consulted before the Board makes a decision affecting that division.

(i) Disclosure of Contributions. — Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. — A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. — The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection shall include a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

(*l*) Additional Requirements for Disclosure Statements. — All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. — The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in nature, conducted in conjunction with the State Ethics Commission, and shall include input from the School of Government at the University of North Carolina at Chapel Hill, the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

(n) Review of Appointments by the Joint Legislative Transportation Oversight Committee. — The Governor shall submit the names of all proposed Board of Transportation appointees, along with the disclosure statements required under subsections (i), (j), and (k) of this section, to the Joint Legislative Transportation Oversight Committee prior to Board members' taking office. The Committee shall have 30 days to review and submit comments to the Governor on the proposed appointees before they take office. The Governor shall consider the views expressed by the Committee concerning the appointees to the Board. If the Committee does not review or submit comments to the Governor on the proposed Board appointees within the 30 days, the Governor may proceed to appoint the proposed members to the Board. (1975, c. 716, s. 1; 1977, c. 464, s. 6; 1981 (Reg. Sess., 1982), c. 1191, ss. 9, 10; 1985, c. 479, s. 185; 1987, c. 738, s. 170(b), (c); c. 747, s. 4.1; 1989, c. 500, s. 53; c. 692, s. 1.10; 1993, c. 483, s. 4; 1995, c. 490, s. 60; 1997-443, s. 32.1; 1997-495, s. 88(a); 1998-169, ss. 1, 2; 2006-201, s. 15; 2006-230, s. 1(c); 2006-264, s. 29(n).)

Editor's Note. —

Session Laws 2006-201, s. 23, provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-201, s. 15, effective January 1, 2007, substituted "State Ethics Commission as a supplemental ruling to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statues" for "Governor or the Governor's designee and in a manner as prescribed by the Governor" near the end of subsections (i) and (j); rewrote subsection (k); and, in the second sentence of subsection (m), inserted "conducted in conjunction with the State Ethics Commission" and deleted "the North Carolina Board of Ethics," preceding "the Attorney."

Session Laws 2006-230, s. 1(c), effective August 1, 2006, in subsection (f), substituted "has the following" for "shall have" in the introductory paragraph, added subdivision (f)(12a), and made minor punctuation changes throughout.

Session Laws 2006-264, s. 29(n), effective August 27, 2006, substituted "School of Government in the University of North Carolina at Chapel Hill" for "Institute of Government" in the second sentence of subsection (m).

ARTICLE 9.

Department of Administration.

Part 10B. Displaced Homemakers.

§ 143B-394.4. Definitions.

As used in this Part, unless the context otherwise requires:

(1) "Center" means any multi-purpose facility or program serving displaced homemakers.
(2) "Council" means the North Carolina Council for Women.
(3) "Department" means the Department of Administration.
(4) "Displaced homemaker" means an individual who:
  a. Has worked in his or her own household and has provided unpaid household services; and
  b. Is unable to secure gainful employment due to the lack of required training, age, or experience; or is unemployed, or underemployed; and
  c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support but is within two years of losing the support, or has been supported by public assistance as the parent of minor children but is no longer eligible, or is within two years of losing the eligibility. (1979, c. 1016, s. 2; 1991, c. 134, s. 6; 2005-405, s. 1; 2006-66, s. 17.7; 2006-259, s. 33.5.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 17.7, as added by Session Laws 2006-259, s. 33.5, effective August 23, 2006, substituted "but is no longer eligible, or is within two years of losing the eligibility" for "and is no longer eligible" at the end of subdivision (4)c.

§ 143B-394.10. North Carolina Fund for Displaced Homemakers.

(a) **(Effective until July 1, 2007)** There is established in the Department of Administration the North Carolina Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with Article 1 of Chapter 143 of the General Statutes and shall be used to make grants to up to 35 centers for displaced homemakers. The Council shall make quarterly grants to no more than 35 eligible centers. Grants shall be awarded according to criteria established by the Council pursuant to G.S. 143B-394.4(4) and G.S. 143B-394.5A. The Council shall use no more than ten percent (10%) of these funds for administrative costs. To be eligible to receive grant funds under this section, a displaced homemaker center shall fulfill all of the criteria established by the Council and shall have been operational for at least two years. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund.

(a) **(Effective July 1, 2007)** There is established in the Department of Administration the North Carolina Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with Chapter 143C of the General Statutes and shall be used to make grants to up to 35 centers for displaced homemakers. The Council shall make quarterly grants to no more than 35 eligible centers. Grants shall be awarded according to criteria established by the Council pursuant to G.S. 143B-394.4(4) and G.S. 143B-394.5A. The Council shall use no more than ten percent (10%) of these funds for administrative costs. To be eligible to receive grant funds under this section, a displaced homemaker center shall fulfill all of the criteria established by the Council and shall have been operational for at least two years. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina Fund for Displaced Homemakers. (1998-219, s. 1; 2005-405, s. 4; 2006-203, s. 106.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2007. The second version of subsection (a) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 106, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "Chapter 143C of the General Statutes" for "Article 1 of Chapter 143 of the General Statutes" in the second sentence of subsection (a).

Part 10C. Domestic Violence Commission.

§ 143B-394.15. Commission established; purpose; membership; transaction of business.

(a) Establishment. — There is established the Domestic Violence Commission. The Commission shall be located within the Department of Administration for organizational, budgetary, and administrative purposes.

(b) Purpose. — The purpose of the Commission is to (i) assess statewide needs related to domestic violence, (ii) assure that necessary services, policies, and programs are provided to those in need, and (iii) coordinate and collaborate with the North Carolina Council For Women in strengthening the existing domestic violence programs which have been established pursuant to G.S. 50B-9 and are funded through the Domestic Violence Center Fund and in establishing new domestic violence programs.

(c) Membership. — The Commission shall consist of 39 members, who reflect the geographic and cultural regions of the State, as follows:

(1) Nine persons appointed by the Governor, one of whom is a clerk of superior court; one of whom is an academician who is knowledgeable

about domestic violence trends and treatment; one of whom is a member of the medical community; one of whom is a United States Attorney for the State of North Carolina or that person's designee; one of whom is a member of the North Carolina Bar Association who has studied domestic violence issues; one of whom is a representative of a victims' service program eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women; one of whom is a member of the North Carolina Coalition Against Domestic Violence; one of whom is a former victim of domestic violence; and one of whom is a member of the public at large.

(2) Nine persons appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, one of whom is a member of the Senate; one of whom is a district court judge; one of whom is a district attorney or assistant district attorney; one of whom is a representative of the law enforcement community with specialized knowledge of domestic violence issues; one of whom is a county manager; one of whom is a representative of a community legal services agency who works with domestic violence victims; one of whom is a representative of the linguistic and cultural minority communities; one of whom is a representative of a victims' service program eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women; and one of whom is a member of the public at large.

(3) Nine persons appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, one of whom is a member of the House of Representatives; one of whom is a magistrate; one of whom is a member of the business community; one of whom is a district court judge; one of whom is a representative of a victims' service program eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women; one of whom is a representative of the law enforcement community with specialized knowledge of domestic violence issues; one of whom provides offender treatment and is approved by the North Carolina Council for Women; one of whom is a representative of the linguistic and cultural minority communities; and one of whom is a public member.

(4) The following persons or their designees, ex officio:
  a. The Governor.
  b. The Lieutenant Governor.
  c. The Attorney General.
  d. The Secretary of the Department of Administration.
  e. The Secretary of the Department of Crime Control and Public Safety.
  f. The Superintendent of Public Instruction.
  g. The Secretary of the Department of Correction.
  h. The Secretary of the Department of Health and Human Services.
  i. The Director of the Office of State Personnel.
  j. The Executive Director of the North Carolina Council for Women.
  k. The Dean of the School of Government at the University of North Carolina at Chapel Hill.
  l. The Chairman of the Governor's Crime Commission.

(d) Terms. — Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint five members for terms of two years and four members for terms of three years.

(2) The President Pro Tempore of the Senate shall initially appoint five members for terms of two years and four members for terms of three years.

(3) The Speaker of the House of Representatives shall initially appoint five members for terms of two years and four members for terms of three years.

Initial terms shall commence on September 1, 1999.

(e) Chair. — The chair shall be appointed biennially by the Governor from among the membership of the Commission. The initial term shall commence on September 1, 1999.

(f) Vacancies. — A vacancy on the Commission or as chair of the Commission resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) Compensation. — The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Removal. — Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) Meetings. — The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(j) Quorum. — A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(k) Office Space. — The Department of Administration shall provide office space in Raleigh for use as offices by the Domestic Violence Commission, and the Department of Administration shall receive no reimbursement from the Commission for the use of the property during the life of the Commission.

(*l*) Staffing. — The Secretary of the Department of Administration shall be responsible for staffing the Commission. To that end, the Secretary shall, at a minimum, assign an employee to serve as a Deputy Director within the North Carolina Council for Women whose primary duties shall be to staff the Commission. The person assigned as Deputy Director shall have the education, experience, and any other qualifications necessary for the position. (1999-237, s. 24.2(b); 2001-424, s. 7.7; 2006-264, s. 29(o).)

Effect of Amendments. — Session Laws 2006-264, s. 29(o), effective August 27, 2006, substituted "Dean of the School of Government at the University of North Carolina at Chapel Hill" for "Director of the Institute of Government" in subdivision (c)(4)k.

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-405. North Carolina State Commission of Indian Affairs — purposes for creation.

The purposes of the Commission shall be as follows:

(1) To deal fairly and effectively with Indian affairs.
(2) To bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina.
(3) To provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships.
(4) To hold land in trust for the benefit of State-recognized Indian tribes. This subdivision shall not apply to federally recognized Indian tribes.
(5) To assist Indian communities in social and economic development.

(6) To promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 2001-344, s. 1; 2006-264, s. 15.)

Effect of Amendments. — Session Laws 2006-264, s. 15, effective August 27, 2006, deleted "The purposes of the Commission shall be" preceding "The purposes" at the beginning of the introductory paragraph.

Part 22. North Carolina Agency for Public Telecommunications.

§ 143B-426.11. (Effective July 1, 2007) Powers of Agency.

In order to enable it to carry out the purposes of this Part, the Agency:

(1) Has the powers of a body corporate, including the power to sue and be sued, to make contracts, to hold and own copyrights and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) May make all necessary contracts and arrangements with any parties which will serve the purposes and facilitate the business of the North Carolina Agency for Public Telecommunications; except that, the Agency may not contract or enter into any agreement for the production by the Agency of programs or programming materials with any person, group, or organization other than government agencies; principal State departments; public and noncommercial broadcast licensees;

(3) May rent, lease, buy, own, acquire, mortgage, or otherwise encumber and dispose of such property, real or personal; and construct, maintain, equip and operate any facilities, buildings, studios, equipment, materials, supplies and systems as said Board may deem proper to carry out the purposes and provisions of this Part;

(4) May establish an office for the transaction of its business at such place or places as the Board deems advisable or necessary in carrying out the purposes of this Part;

(5) May apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources for any and all of the purposes authorized in this Part; may extend or distribute the funds in accordance with directions and requirements attached thereto or imposed thereon by the federal agency, the State of North Carolina or any political subdivision thereof, or any public or private lender or donor; and may give such evidences of indebtedness as shall be required, but no indebtedness of any kind incurred or created by the Agency shall constitute an indebtedness of the State of North Carolina or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina or any political subdivision thereof. At no time may the total outstanding indebtedness of the Agency, excluding bond indebtedness, exceed five hundred thousand dollars ($500,000) unless the Agency has consulted with the Director of the Budget;

(6) May pay all necessary costs and expenses involved in and incident to the formation and organization of the Agency and incident to the administration and operation thereof, and may pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(7) Under such conditions as the Board may deem appropriate to the accomplishment of the purposes of this Part, may distribute in the

form of grants, gifts, or loans any of the revenues and earnings received by the Agency from its operations;

(8) May adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be exercised, and may provide for the creation of such divisions and for the appointment of such committees, and the functions thereof, as the Board deems necessary or expedient in facilitating the business and purposes of the Agency;

(9) The Board shall be responsible for all management functions of the Agency. The chairman shall serve as the chief executive officer, and shall have the responsibility of executing the policies of the Board. The Executive Director shall be the chief operating and administrative officer and shall be responsible for carrying out the decisions made by the Board and its chairman. The Executive Director shall be appointed by the Governor upon the recommendation of the Board and shall serve at the pleasure of the Governor. The salary of the Executive Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. Subject to the provisions of the State Personnel Act and with the approval of the Board, the Executive Director may appoint, employ, dismiss and fix the compensation of such professional, administrative, clerical and other employees as the Board deems necessary to carry out the purposes of this Part; but any employee who serves as the director of any division of the Agency which may be established by the Board shall be appointed with the additional approval of the Secretary of Administration. There shall be an executive committee consisting of three of the appointed members and three of the ex officio members elected by the Board and the chairman of the Board, who shall serve as chairman of the executive committee. The executive committee may do all acts which are authorized by the bylaws of the Agency. Members of the executive committee shall serve until their successors are elected;

(10) May do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section; and

(11) May do any and all things necessary to accomplish the purposes of this Part.

Nothing herein authorizes the Agency to exercise any control over any public noncommercial broadcast licensee, its staff or facilities or over any community antenna television system (Cable TV; CATV), its staff, employees or facilities operating in North Carolina, or the Police Information Network (PIN), its staff, employees or facilities or the Judicial Department.

The property of the Agency shall not be subject to any taxes or assessments. (1979, c. 900, s. 1; 1983, c. 666; c. 717, s. 82; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1985, c. 122, ss. 3, 4; 1985 (Reg. Sess., 1986), c. 955, ss. 99-101; 2006-203, s. 107.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the version of this section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 107, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last paragraph, which read: "Prior to taking any action under subdivisions (5) or (7) of this section, the Board may consult with the Advisory Budget Commission."

§ 143B-426.14. (Effective July 1, 2007) Issuance of bonds.

As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, telecommunications equipment or systems or any other matter or thing which the Agency is herein authorized to acquire, construct, equip, maintain, or operate, the Agency may at one time or from time to time issue negotiable revenue bonds of the Agency. The principal and interest of the revenue bonds shall be payable solely from the revenues to be derived from the operation of all or any part of the Agency's properties and facilities. A pledge of the net revenues derived from the operation of specified properties and facilities of the Agency may be made to secure the payment of the bonds as they mature. Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The bonds and the income therefrom shall be exempt from all taxation within the State. (1979, c. 900, s. 1; 2006-203, s. 108.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 108, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "with the approval of the Advisory Budget Commission" preceding "at one time" in the first sentence.

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

§ 143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of State Treasurer. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for employees of the State, any county or municipality, the North Carolina Community College System, and any political subdivision of the State. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

(b) The Board shall consist of seven voting members, as follows:

(1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, one of whom shall be a State employee;

(2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;
(3) One member shall be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate under G.S. 120-121;
(4) The Secretary of Administration, ex officio; and
(5) The State Treasurer, ex officio, chairman.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for teachers and employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(h1) Notwithstanding any other law, an employee of any county or municipality, an employee of the North Carolina Community College System, or an employee of any political subdivision of the State may participate in any 457 Plan adopted by the State, with the consent of the Board and with the consent of the proper governing authority of such county, municipality, community college, or political subdivision of the State where such employee is employed.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(*l*) All clerical and other services and personnel required by the Board shall be supplied by the Department of State Treasurer, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The State Treasurer is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1983, c. 559, s. 1; 1991, c. 389, s. 2; 1995, c. 490, s. 40; 1999-456, s. 42; 2004-137, s. 1; 2006-66, s. 20.1.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 20.1, effective July 1, 2006, substituted "State Treasurer" for "Administration" at the end of the first sentence in subsection (a); substituted "Secretary of Administration" for "State Treasurer" in subdivision (b)(4); substituted "State Treasurer" for "Secretary of Administration" in subdivision (b)(5) and subsection (m); and substituted "Department of State Treasurer" for "Secretary of Administration" in subsection (*l*).

Part 28. Office of the State Controller.

§ 143B-426.39. (Effective July 1, 2007) Powers and duties of the State Controller.

The State Controller shall:

(1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds. The State Controller may elect to review a State agency's compliance with prescribed uniform State accounting system standards, as well as applicable legal and constitutional requirements related to compliance with such standards.

(2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgment of the State Controller, are necessary to secure and maintain internal control and facilitate the recording of account-

ing data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.

(3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.

(4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget and Management, prescribe a form for the periodic reporting of financial accounts, transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.

(4a) Prescribe that, unless exempted by the State Controller, newly created or acquired component units of the State are required to have the same fiscal year as the State.

(5) Prescribe the manner in which disbursements of the State agencies shall be made and may require that warrants, vouchers, electronic payments, or checks, except those drawn by the State Auditor, State Treasurer, and Administrative Officer of the Courts, shall bear two signatures of officers as designated by the State Controller.

(6) Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with G.S. 143B-426.40G and G.S. 143C-6-6 for all State agencies. This uniform payroll system shall be designed to assure compliance with all legal and constitutional requirements. When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to operate its own payroll system. Any State agency authorized by the State Controller to operate its own payroll system shall comply with the requirements adopted by the State Controller.

(7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency.

(8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.

(9) Develop, implement, and amend as necessary a uniform statewide cash management plan for all State agencies in accordance with G.S. 147-86.11.

(9a) Implement a statewide accounts receivable program in accordance with Article 6B of Chapter 147 of the General Statutes.

(10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also

G.S. 143B-426.39 is set out twice. See notes.

furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.

(11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management, at the end of each quarter, a report on the financial condition and results of operations of the State entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.

(12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report in accordance with generally accepted accounting principles of the preceding fiscal year, in accordance with G.S. 143B-426.40H. The report shall include State agencies and component units of the State, as defined by generally accepted accounting principles.

(13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the State Budget Act, Chapter 143C of the General Statutes.

(14) through (16) Recodified as G.S. 143B-472.42 (1), (2), and (3) by Session Laws 1997-148, s. 3. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a); 1997-148, s. 3; 2000-67, s. 7(b); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2005-65, s. 1; 2005-276, s. 6.19; 2006-66, s. 6.19(a), (c); 2006-203, s. 8; 2006-221, s. 3A; 2006-259, s. 40(a), (c).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. —

Session Laws 2006-66, s. 6.19(a) and (c), as added by Session Laws 2006-221, s. 3A, substituted "G.S. 143B-426.39E" for "G.S. 143B-426.39B," which had been substituted for "G.S. 143-3.2" by Session Laws 2006-203, s. 8, and substituted "G.S. 143B-426.39F" for "G.S. 143B-426.39C" which had been substituted for "G.S. 143-20.1" by Session Laws 2006-203, s. 8. The references to G.S. 143B-426.39E and G.S. 143B-426.39F have been changed to G.S. 143B-426.40G and G.S. 143B-426.40H, respectively, at the direction of the Revisor of Statutes.

Session Laws 2006-259, s. 40(a) and (c), which made identical changes to those made by Session Laws 2006-66, s. 6.19(a) and (c), as added by Session Laws 2006-221, s. 3A, was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Effect of Amendments. —

Session Laws 2006-66, s. 6.19(a), (c), as added by Session Laws 2006-221, s. 3A, effective July 1, 2007, in subdivision (6), substituted "G.S. 143B-426.39E" for "G.S. 143B-426.39B," which had been substituted for "G.S. 143-3.2" by Session Laws 2006-203, s. 8; and in subdivision (12), substituted "G.S. 143B-426.39F" for "G.S. 143B-426.39C," which had been substituted for "G.S. 143-20.1" by Session Laws 2006-203, s. 8. See Editor's note.

Session Laws 2006-203, s. 8, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subdivision (5), substituted "made and may require that warrants, vouchers, electronic payments, or checks, except those drawn by the State Auditor, State Treasurer, and Administrative Officer of the Courts, shall bear two signatures of officers as designated by the State Controller" for "made, in accordance with G.S. 143-3"; in subdivision (6), substituted "G.S. 143B-426.39B and G.S. 143C-6-6" for "G.S. 143-3.2 and 143-34.1"; in subdivision (7), substituted "State agency" for "State agency, in accordance with G.S. 143-20"; in subdivision (12), substituted "G.S. 143B-426.39C" for "G.S. 143-20.1"; and in subdivision (13), substituted "the State Budget Act, Chapter 143C of the General Statutes." for "the Executive Budget Act, Chapter 143, Article 1 of the General Statutes." See Editor's note.

Part 28B. Assignment of Claims Against the State.

(Effective July 1, 2007)

§ 143B-426.40A. (Effective July 1, 2007) Assignments of claims against State.

(a) Definitions. — The following definitions apply in this section:

(1) Assignment. An assignment or transfer of a claim, or a power of attorney, an order, or another authority for receiving payment of a claim.

(2) Claim. A claim, a part or a share of a claim, or an interest in a claim, whether absolute or conditional.

(3) Qualified charitable organization. A charitable organization that is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.

(4) State employee credit union. A credit union organized under Chapter 54 of the General Statutes whose membership is at least one-half employees of the State.

(5) The State. The State of North Carolina and any department, bureau, or institution of the State of North Carolina.

(b) Assignments Prohibited. — Except as otherwise provided in this section, any assignment of a claim against the State is void, regardless of the consideration given for the assignment, unless the claim has been duly audited and allowed by the State and the State has issued a warrant for payment of the claim. Except as otherwise provided in this section, the State shall not issue a warrant to an assignee of a claim against the State.

(c) Assignments in Favor of Certain Entities Allowed. — This section does not apply to an assignment in favor of:

(1) A hospital.

(2) A building and loan association.

(3) A uniform rental firm in order to allow an employee of the Department of Transportation to rent uniforms that include Day-Glo orange shirts or vests as required by federal and State law.

(4) An insurance company for medical, hospital, disability, or life insurance.

(d) Assignments to Meet Child Support Obligations Allowed. — This section does not apply to assignments made to meet child support obligations pursuant to G.S. 110-136.1.

(e) Assignments for Prepaid Legal Services Allowed. — This section does not apply to an assignment for payment for prepaid legal services.

(f) Payroll Deduction for State Employees' Credit Union Accounts Allowed. — An employee of the State who is a member of a State employee credit union may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit to any credit union accounts, purchase of any credit union shares, or payment of any credit union obligations agreed to by the employee and the State Employees' Credit Union.

(f1) Payroll Deduction for Contributions to the Parental Savings Fund Allowed. — An employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit in the Parental Savings Trust Fund administered by the State Education Assistance Authority.

(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. — An employee of the State or any of its political subdivisions, institutions, departments, bureaus, agencies or commissions, or any of its local boards of education or community colleges, who is a member of a domiciled employees' association that has at least 2,000 members, 500 of whom are employees of the State, a political subdivision of the State, or public school employees, may authorize, in writing, the periodic deduction each payroll period from the employee's salary or wages a designated lump sum to be paid to the employees' association. A political subdivision may also allow periodic deductions for a domiciled employees' association that does not otherwise meet the minimum membership requirements set forth in this paragraph.

An employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.

An authorization under this subsection shall remain in effect until revoked by the employee. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, except for local boards of education.

(h) Payroll Deduction for State Employees Combined Campaign Allowed. — Subject to rules adopted by the State Controller, an employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum to be paid to satisfy the employee's pledge to the State Employees Combined Campaign.

(i) Payroll Deduction for Public School and Community College Employees' Contributions to Charitable Organizations Allowed. — Subject to rules adopted by the State Controller, an employee of a local board of education or community college may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the board of education or community college of a designated lump sum to be contributed to a qualified charitable organization that has first been approved by the employee's board of education or community college board.

(j) Payroll Deduction for University of North Carolina System Employees' Contributions to Certain Charitable Organizations Allowed. — Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution of a designated lump sum to be contributed to a qualified charitable organization that exists to support athletic or charitable programs of the constituent institution and that has first been approved by the President of The University of North Carolina as existing to support athletic or charitable programs. If a payroll deduction plan under this subsection results in additional costs to a constituent institution, these costs shall be paid by the qualified charitable organizations receiving contributions under the plan.

(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. — Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities.

(*l*) Assignment of Payments From the Underground Storage Tank Cleanup Funds. — This section does not apply to an assignment of any claim for payment or reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94B or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94D. (2006-66, s. 6.19(a), (b); 2006-203, s. 9; 2006-221, s. 3A; 2006-259, s. 40(a), (b); 2006-264, s. 67(b).)

Editor's Note. — Session Laws 2006-203, s. 9, enacted this section as G.S. 143B-426.39A, and was recodified as G.S. 143B-426.39D by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A; it was recodified as G.S. 143B-426.40A at the direction of the Revisor of Statutes.

Session Laws 2006-66, s. 6.19(b), as added by Session Laws 2006-221, s. 3A, effective July 1, 2007, stated that if House Bill 914, 2005 Regular Session [2006-203], becomes law, effective July 1, 2007, the same amendment to G.S. 143-3.3(g) made by Section 6.35 of S.L. 2005-276 is also made to G.S. 143B-426.39D(g) [now G.S. 143B-426.40A(g)], as enacted by Section 9 of House Bill 914 [2006-203] and recodified by Section 6.19(a) of this section.

Session Laws 2006-203, s. 126, makes this Part effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-259, s. 40(a) and (b), which made identical changes to those made by Session Laws 2006-66, s. 6.19(a) and (b), as added by Session Laws 2006-221, s. 3A, was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Session Laws 2006-264, s. 67(b), provided that if House Bill 914, 2005 Regular Session [2006-203], became law, then the same amendment made to G.S. 143-3.3(g) by Session Laws 2006-264, s. 67(a), would be made to G.S. 143B-426.39D(g) [now 143B-426.40A(g)].

Effect of Amendments. — Session Laws 2006-66, s. 6.19(b), as amended by Session Laws 2006-221, s. 3A, effective July 1, 2007, in subsection (g), in the first paragraph, inserted "political subdivisions," and ", a political subdivision of the State," and substituted "500" for "the majority." See Editor's note.

Session Laws 2006-264, s. 67(b), effective August 27, 2006, added the last sentence in the first paragraph of subsection (g). See Editor's note.

Part 28C. Accounting Systems.

(Effective July 1, 2007)

§ 143B-426.40G. (Effective July 1, 2007) Issuance of warrants upon State Treasurer; delivery of warrants and disbursements for non-State entities.

(a) The State Controller shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer. All warrants upon the State Treasurer shall be signed by the State Controller, who before issuing them shall determine the legality of payment and the correctness of the accounts. All warrants issued for non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer.

When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to make expenditures through a disbursing account with the State Treasurer. The State Controller shall authorize the Judicial Department and the General Assembly to make expenditures through such disbursing accounts. All disbursements made to non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer. All deposits in these disbursing accounts shall be by the State Controller's warrant. A copy of each voucher making withdrawals from these disbursing accounts and any supporting data required by the State Controller shall be forwarded to the Office of the State Controller monthly or as otherwise required by the State Controller. Supporting data for a voucher making a withdrawal from one of these disbursing accounts to meet a payroll shall include the amount of the payroll and the employees whose compensation is part of the payroll.

A central payroll unit operating under the Office of the State Controller may make deposits and withdrawals directly to and from a disbursing account. The disbursing account shall constitute a revolving fund for servicing payrolls passed through the central payroll unit.

The State Controller may use a facsimile signature machine in affixing his signature to warrants.

(b) The State Treasurer may impose on an agency a fee of fifteen dollars ($15.00) for each check drawn against the agency's disbursing account that causes the balance in the account to be in overdraft or while the account is in overdraft. The financial officer shall pay the fee from non-State or personal funds to the General Fund to the credit of the miscellaneous nontax revenue account by the agency. (2006-66, s. 6.19(a); 2006-203, s. 9; 2006-221, s. 3A; 2006-259, s. 40(a).)

Editor's Note. — Session Laws 2006-203, s. 9, enacted this section as G.S. 143B-426.39B, and was recodified as G.S. 143B-426.39F by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A; it was recodified as G.S. 143B-426.40G at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, makes this Part effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-259, s. 40(a), which made identical changes to those made by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A, was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

§ 143B-426.40H. (Effective July 1, 2007) Annual financial information.

Every fiscal year, all State agencies and component units of the State, as defined by generally accepted accounting principles, shall prepare annual financial information on all funds administered by them no later than 60 days after the end of the State's fiscal year then ended in accordance with generally accepted accounting principles as described in authoritative pronouncements and interpreted or prescribed by the State Controller, and in the form and time frame required by the State Controller. The State Controller shall publish guidelines specifying the procedures to implement the necessary records, procedures, and accounting systems to reflect these statements on the proper basis of accounting.

Accordingly, the State Controller shall combine the financial information for the various agencies into a Comprehensive Annual Financial Report for the State of North Carolina in accordance with generally accepted accounting principles. These statements, along with the opinion of the State Auditor, shall be published as the official financial statements of the State and shall be distributed to the Governor, the Office of State Budget and Management, members of the General Assembly, heads of departments, agencies, and institutions of the State, and other interested parties. The State Controller shall notify the Director of the Budget of any State agencies and component units of the State, as defined by generally accepted accounting principles, that have not complied fully with the requirements of this section within the specified time, and the Director of the Budget shall employ whatever means necessary, including the withholding of allotments, to ensure immediate corrective actions. (2006-66, s. 6.19(a); 2006-203, s. 9; 2006-221, s. 3A; 2006-259, s. 40(a).)

Editor's Note. — Session Laws 2006-203, s. 9, enacted this section as G.S. 143B-426.39C, and was recodified as G.S. 143B-426.39F by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A; it was recodified as G.S. 143B-426.40H at the direction of the Revisor of Statutes.

Session Laws 2006-259, s. 40(a), which made identical changes to those made by Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A, was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

ARTICLE 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-431. Department of Commerce — functions.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 12.8(a) and (b), provides: "(a) There is established in the Department of Commerce a reserve to be known as the Economic Development Reserve. Funds from the Reserve shall not be expended or transferred except in accordance with the provisions of this section. Of the funds appropriated in this act to the Department of Commerce, the sum of ten million dollars ($10,000,000) shall be allocated to the Economic Development Reserve for the purpose of awarding grants for site acquisition and economic development projects.

"(b) By May 1, 2007, the Department of Commerce shall submit a report to the Office of State Budget and Management and the Fiscal Research Division containing the following information about each economic development project that was awarded a grant: (i) the name of the grant recipient involved; (ii) a description of the project; (iii) the project location; (iv) the rationale for awarding the grant; and (v) the amount of the grant."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Part 2. Economic Development.

§ 143B-437.01. Industrial Development Fund.

(a) Creation and Purpose of Fund. — There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars ($5,000) per new job created up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in a county that has one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.

(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b).

(a1) Definitions. — The following definitions apply in this section:

(1) Air courier services. — Defined in G.S. 105-129.81.

(2) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.

(2a) Company headquarters. — Defined in G.S. 105-129.81.

(3) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.

(4) Economically distressed county. — A county that has one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(5) Eligible industry. — A company headquarters or a person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade.

(6) Information technology and services. — Defined in G.S. 105-129.81.

(7) Major economic dislocation. — The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. — Defined in G.S. 105-129.81.
(9) Reserved.
(10) Warehousing. — Defined in G.S. 105-129.81.
(11) Wholesale trade. — Defined in G.S. 105-129.81.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. — There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of the counties that have one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. — The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5. (1989, c. 751, s. 9(c); c. 754, s. 54; 1991 (Reg. Sess., 1992), c. 959, s. 60; 1993, c. 444, s. 1; 1996, 2nd Ex. Sess., c. 13, s. 3.5; 1997-456, s. 27; 1998-55, s. 6; 1999-360, s. 17; 2000-56, s. 3(b); 2002-172, ss. 2.2(a), (b); 2003-416, s. 2; 2005-276, s. 13.5; 2006-252, s. 2.4.)

Effect of Amendments. —
Session Laws 2006-252, s. 2.4, effective January 1, 2007, in subdivision (a)(3), substituted "a county that has one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied" for "an enterprise tier one area as defined in G.S. 105-129.3"; rewrote subsection (a1); and in subsection (b1), substituted "the counties that have one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied" for "enterprise tier one, two, and three areas, as defined in G.S. 105-129.3" at the end of the first sentence.

§ 143B-437.04. Community development block grants.

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

(1) No local match is required for grants awarded for projects located in counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(2) To the extent practicable, priority consideration for grants is given to projects located in counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied or in urban progress zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated an urban progress zone under G.S. 143B-437.09, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish an urban progress zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce. (1996, 2nd Ex. Sess., c. 13, s. 3.6; 1997-456, s. 27; 1998-55, s. 3; 2006-252, s. 2.5.)

Effect of Amendments. — Session Laws 2006-252, s. 2.5, effective January 1, 2007, in subdivision (a)(1), substituted "counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied" for "enterprise tier one areas as defined in G.S. 105-129.3"; in subdivision (a)(2), substituted "counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied or in urban progress" for "enterprise tier one areas as defined in G.S. 105-129.3 or in development"; and in subsection (b), substituted "an urban progress zone" for "a development zone" twice, and "G.S. 143B-437.09" for "G.S. 105-129.3A."

§ 143B-437.08. Development tier designation.

(a) Tiers Defined. — A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. — Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. — After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. — In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. — Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties, and any county that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census shall automatically be ranked one of the 40 highest counties.

(f) Adjustment for Development Tier One Areas. — Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. — An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.
(2) At least one-third of the park is located in the county with the lower tier designation.
(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.
(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. — An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in three or more contiguous counties.
(2) At least one of the counties in which the industrial park is located is a development tier one area.
(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.
(4) In each county in which the industrial park is located, the park has at least 250 developable acres. For the purposes of this subdivision, "developable acres" includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.
(5) The total population of all of the counties in which the industrial park is located is less than 200,000.
(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates. (2006-252, s. 1.2.)

Editor's Note. — Session Laws 2006-252, s. 1.2A, provides: "Notwithstanding the provisions of G.S. 143B-437.08, as enacted by Section 1.2 of this act, for the 2007 taxable year, a development tier one area is a county whose annual ranking is one of the 41 highest in the State."

Session Laws 2006-252, s. 1.4, provides: "The Department of Commerce shall, in consultation with the North Carolina Rural Center, Inc. and lower-tiered counties, develop additional strategies to enhance economic growth and development in economically distressed areas. The Department shall report on the results of this study to the Joint Legislation Economic Development Oversight Committee by January 1, 2007. For the purposes of this section, 'economically distressed areas' means enterprise tier one areas as defined in G.S. 105-129.3."

Session Laws 2006-252, s. 1.5, made this section effective August 17, 2006.

§ 143B-437.09. Urban progress zone designation.

(a) Urban Progress Zone Defined. — An urban progress zone is an area comprised of one or more contiguous census tracts, census block groups, or both, or parts thereof, in the most recent federal decennial census that meets all conditions in this subsection.

(1) All land within the zone is located in whole within the primary corporate limits of a municipality with a population of more than 10,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) Every census tract and census block group that composes part of the zone meets at least one of the following conditions:

a. More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

b. At least fifty percent (50%) of the area of the portion that is within the primary corporate limits of the municipality is zoned as nonresidential and the census tract or census block group is adjacent to a census tract or block group of which at least twenty percent (20%) of the population is below the poverty level.

(3) The area of the zone zoned as nonresidential does not exceed thirty-five percent (35%) of the total area of the zone.

(b) Limitations. — No census tract or block group may be located in more than one urban progress zone. The total area of all zones within a municipality may not exceed fifteen percent (15%) of the total area of the municipality unless the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality. In the case of a municipality where the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality, the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section may be designated as an urban poverty zone.

(c) Designation. — Upon application of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that satisfies the conditions and limitations of subsections (a) and (b) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.

(2) A detailed description of the boundaries of the area that would comprise the zone.

(3) A zoning map for the municipality with the proposed zone clearly delineated upon it.
(4) A certification regarding the size of the proposed zone and the areas within the proposed zone zoned as nonresidential.
(5) Detailed census information on the municipality and the proposed zone.
(6) A resolution of the governing body of the municipality requesting the designation of the area as an urban progress zone.
(7) Any other material required by the Secretary of Commerce.

(d) Parcel of Property Partially in Urban Progress Zone. — For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.
(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary. (2006-252, s. 1.2.)

Editor's Note. — Session Laws 2006-252, s. 1.4, provides: "The Department of Commerce shall, in consultation with the North Carolina Rural Center, Inc. and lower-tiered counties, develop additional strategies to enhance economic growth and development in economically distressed areas. The Department shall report on the results of this study to the Joint Legislation Economic Development Oversight Committee by January 1, 2007. For the purposes of this section, 'economically distressed areas' means enterprise tier one areas as defined in G.S. 105-129.3."

Session Laws 2006-252, s. 1.5, made this section effective August 17, 2006.

§ 143B-437.10. Agrarian growth zone designation.

(a) Agrarian Growth Zone Defined. — An agrarian growth zone is an area comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census that meets all conditions in this subsection. A county may have no more than one agrarian growth zone.

(1) All land within the zone is located in whole within a county that has no municipality with a population in excess of 10,000.
(2) Every census tract and census block group that composes part of the zone has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.
(3) The area of the zone less the smallest census tract included in the zone does not exceed five percent (5%) of the total area of the county in which the zone is located.

(b) Designation. — Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is an agrarian growth zone that satisfies the conditions and limitations of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.
(2) A detailed description of the boundaries of the area that would comprise the zone.
(3) A certification regarding the size of the proposed zone.
(4) Detailed census information on the county and the proposed zone.

(5) A resolution of the board of county commissioners requesting the designation of the area as an agrarian growth zone.
(6) Any other material required by the Secretary of Commerce.

(c) Parcel of Property Partially in Agrarian Growth Zone. — For the purposes of this section, a parcel of property that is located partially within an agrarian growth zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.
(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary. (2006-252, s. 1.2.)

Editor's Note. — Session Laws 2006-252, s. 1.4, provides: "The Department of Commerce shall, in consultation with the North Carolina Rural Center, Inc. and lower-tiered counties, develop additional strategies to enhance economic growth and development in economically distressed areas. The Department shall report on the results of this study to the Joint Legislation Economic Development Oversight Committee by January 1, 2007. For the purposes of this section, 'economically distressed areas' means enterprise tier one areas as defined in G.S. 105-129.3."

Session Laws 2006-252, s. 1.5, made this section effective August 17, 2006.

Part 2F. e-NC Initiative.

§ 143B-437.44. (This part has a delayed repeal date. See notes.) Legislative findings.

Editor's Note. —

Session Laws 2003-425, s. 4, as amended by Session Laws 2006-66, s. 12.3(a), provides: "Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. The e-NC Authority created in this act is dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective December 31, 2011."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 12.3(c), provides: "(c) Of the funds appropriated in this act to the Department of Commerce, the sum of five hundred thousand dollars ($500,000) shall be allocated to the e-NC Authority.

"The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

"The e-NC Authority shall report to the 2007 General Assembly on the following:

"(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access high-speed Internet.

"(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

"(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

"The e-NC Authority shall, by September 30, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Part 2G. Job Development Investment Grant Program.

§ 143B-437.50. Legislative findings and purpose.

Editor's Note. —

Session Laws 2006-168, s. 1.13, provides: "The Department of Commerce shall conduct a comprehensive, systematic study of the Job Development Investment Grant Program. The study shall be completed and submitted to the Chairs of the House of Representatives and Senate Finance Committees and the House of Representatives and Senate Appropriations Committees no later than February 1, 2007. The study shall include an examination of the following:

"(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

"(2) The costs of the program in relation to other State economic development incentive programs.

"(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

"(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings."

§ 143B-437.51. Definitions.

The following definitions apply in this Part:

(1) Agreement. — A community economic development agreement under G.S. 143B-437.57.

(2) Base period. — The period of time set by the Committee during which new employees are to be hired for the positions on which the grant is based.

(3) Business. — A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. — The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(4a) Development tier. — The classification assigned to an area pursuant to G.S. 143B-437.08.

(5) Eligible position. — A position created by a business and filled by a new full-time employee in this State during the base period.

(6) Full-time employee. — A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. — A full-time employee who represents a net increase in the number of the business's employees statewide.

(8) Overdue tax debt. — Defined in G.S. 105-243.1.

(9) Related member. — Defined in G.S. 105-130.7A.

(10) Withholdings. — The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.1; 2006-168, s. 1.1; 2006-252, s. 2.6; 2006-264, s. 69(a).)

Editor's Note. — Session Laws 2006-264, s. 69(a) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168 becoming law.

Effect of Amendments. — Session Laws 2006-168, s. 1.1, effective July 27, 2006, rewrote subdivision (2) which read: "Base years. The first 24 months following the date set by the Committee for performance to begin under the agreement."; substituted "period" for "years or in subsequent years of a grant" at the end of subdivision (5); and deleted the former last sentence of subdivision (7) which read: "The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years."

Session Laws 2006-252, s. 2.6, effective January 1, 2007, redesignated former subdivision (5a) as present subdivision (4a) and in subdivision (4a), substituted "Development tier" for "Enterprise tier" and "G.S. 143B-437.08" for "G.S. 105-129.3."

§ 143B-437.52. Job Development Investment Grant Program.

(a) Program. — There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. — The maximum number of agreements the Committee may enter into each calendar year is 25.

(c) Ceiling. — Except as provided in this section, the maximum amount of total annual liability for grants for agreements entered into in any single calendar year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars ($15,000,000). The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars ($30,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

(d) Measuring Employment. — For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.2; 2004-124, ss. 32G.1(b), 32G.1(c), 32G.1(e); 2006-168, s. 1.2; 2006-264, s. 69(b).)

Editor's Note. —

Session Laws 2006-264, s. 69(b) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168 becoming law.

Effect of Amendments. —

Session Laws 2006-168, s. 1.2, effective July 27, 2006, in subsection (c), in the first sentence, substituted "Except as provided in this section, the" for "The" and inserted "including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61," and added the second sentence; and substituted "agreement" for "designation" at the beginning of subdivision (d)(2).

§ 143B-437.53. Eligible projects.

(a) Minimum Number of Eligible Positions. — A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one development tier area, the location with the highest development tier area designation determines the minimum number of eligible positions that must be created.

Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	20
Tier Three	20

(b) Ineligible Businesses. — A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or club, other than a professional motorsports racing team, is not eligible for a grant under this Part.

(c) Health Insurance. — A business is eligible for a grant under this Part only if the business provides health insurance for all of the applicable full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, an applicable full-time employee is one who earns from the business less than one hundred fifty thousand dollars ($150,000) in taxable compensation on an annualized basis or three and one-half times the annualized average State wage for all insured private employers in the State employing between 250 and 1,000 employees, whichever is greater. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.58 a certification that the business continues to provide health insurance, as required by this subsection, for all applicable full-time employees of the project with respect to which the grant is made. If the business ceases to provide the required health insurance, the Committee shall amend or terminate the agreement as provided in G.S. 143B-437.59.

(d) Repealed by Session Laws 2003-435, 2nd Ex. Sess., s. 2.3, effective December 16, 2003.

(e) Safety and Health Programs. — In order for a business to be eligible for a grant under this Part, the business must have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, Ex. Sess., s. 2.3; 2005-241, s. 5; 2006-168, s. 1.3; 2006-252, s. 2.7.)

Effect of Amendments. —

Session Laws 2006-168, s. 1.3, effective July 27, 2006, inserted "other than a professional motorsports racing team," in the last sentence of subsection (b).

Session Laws 2006-252, s. 2.7, effective January 1, 2007, in subsection (a), substituted "development tier" for "enterprise tier" two times in the second sentence, and rewrote the table.

§ 143B-437.55. Applications; fees; reports; study.

(a) Application. — A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.

(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.

(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.

(4) The number of eligible positions proposed to be created for the project and the salaries for these positions.

(5) An estimate of the total withholdings.

(6) Certification that the business will provide health insurance to full-time employees of the project as required by G.S. 143B-437.53(c).

(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.

(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.

(9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. — When filing an application under this section, the business must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Annual Reports. — The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

(1) A listing of each community economic development agreement negotiated and entered into during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year.

(2) An update on the status of projects under agreements entered into before the preceding calendar year.

(3) The number and development tier area of eligible positions created by projects with respect to which grants were awarded.

(3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.

(4) The wage levels of all eligible positions created by projects with respect to which grants are awarded, aggregated and listed in increments of five thousand dollars ($5,000).

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.

(6) The criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and any changes in those criteria from the previous calendar year.

(7) The effectiveness of the program in recruiting new and expanding businesses.

(8) The environmental impact of businesses that have received grants under the program.

(9) The geographic distribution of grants, by number and amount, awarded under the program.
(10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.
(11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.
(12) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.
(13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. — The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each community economic development agreement negotiated and entered into during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

(e) Study. — The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year. (2002-172, s. 2.1(a); 2003-416, s. 2; 2005-429, s. 2.1; 2006-168, s. 1.4; 2006-252, s. 2.8; 2006-264, s. 69(c).)

Editor's Note. — Session Laws 2006-264, s. 69(c) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168 becoming law.

Effect of Amendments. — Session Laws 2006-168, s. 1.4, effective July 27, 2006, in subdivision (a)(4), substituted "for the project" for "during the base years and thereafter" in the middle; in subdivision (a)(6), deleted "all" following "insurance to" near the middle and added "as required by G.S. 143B-437.53(c)" at the end; and deleted former subdivision (c)(12) which read: "The division and use of fees collected by the Committee under this section and under G.S. 143B-437.58."

Session Laws 2006-252, s. 2.8, effective January 1, 2007, substituted "development" for "enterprise" in subdivision (c)(3).

§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:
(1) The number of eligible positions to be created.
(2) The expected duration of those positions.
(3) The type of contribution the business can make to the long-term growth of the State's economy.
(4) The amount of other financial assistance the project will receive from the State or local governments.

(5) The total dollar investment the business is making in the project.
(6) Whether the project utilizes existing infrastructure and resources in the community.
(7) Whether the project is located in a development zone.
(8) The number of eligible positions that would be filled by residents of a development zone.
(9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant payment is made. The first grant payment must be made within six years after the date on which the grant was awarded. The number of years in the base period for which grant payments may be made shall not exceed five years.

(c) The grant may be based only on eligible positions created during the base period.

(d) For any eligible position that is located in a development tier three area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For any eligible position that is located in a development tier two area, eighty-five percent (85%) of the annual grant approved for disbursement shall be payable to the business, and fifteen percent (15%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the development tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.5; 2006-168, s. 1.5; 2006-252, s. 2.9(a), (b); 2006-264, s. 69(d).)

Editor's Note. — Session Laws 2006-252, s. 2.9(a), which amended subsection (d), was contingent on House Bill 2744, 2005 General Assembly [2006-168], not becoming law. It did become law.

Session Laws 2006-264, s. 69(d) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168 becoming law.

Effect of Amendments. — Session Laws 2006-168, s. 1.5, effective July 27, 2006, added the last sentence in subsection (b); substituted "period" for "years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant" at the end of subsection (c); rewrote subsection (d) which read: "The percentage established in the agreement shall be reduced by one-fourth for any eligible position that is located in an enterprise tier four or five area.", and inserted "including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61" in the middle of subsection (f).

Session Laws 2006-252, s. 2.9(b), effective January 1, 2007, in subsection (d), substituted "a development tier three area" for "an enterprise tier four or five area" in the first sentence, added the second sentence, and substituted "development tier" for "enterprise tier" in the last sentence.

§ 143B-437.57. Community economic development agreement.

(a) Terms. — Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired during the base period.
(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
(4) The amount of the grant based on a percentage of withholdings.
(5) A method for determining the number of new employees hired during a grant year.
(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.
(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
(9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.
(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.
(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base period.
(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.
(13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.
(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.59.
(15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.
(16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.
(17) A provision encouraging the business to hire North Carolina residents.
(18) A provision encouraging the business to use the North Carolina State Ports.
(19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings

from the business in an amount that exceeds the amount of the grant payment.

(20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).

(21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.

(23) A provision stating that the amount of a grant associated with any specific eligible position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year.

(24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.

(25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services.

(b) Approval of Attorney General. — The Attorney General shall review the terms of all proposed agreements entered into by the Committee. To be effective against the State, an agreement entered into under this Part must be signed personally by the Attorney General.

(c) Agreement Binding. — A community economic development agreement is a binding obligation of the State and is not subject to State funds being appropriated by the General Assembly. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, ss. 32G.1(f), 32G.1(g); 2006-168, s. 1.6; 2006-264, s. 69(e).)

Editor's Note. —

Session Laws 2006-264, s. 69(e) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168 becoming law.

Effect of Amendments. —

Session Laws 2006-168, s. 1.6, effective July 27, 2006, substituted "during the base period" for "in the base years and later years" at the end of subdivision (a)(1), substituted "period" for "years" at the end of subdivision (a)(11), and inserted "including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61" in subdivision (a)(23).

§ 143B-437.58. Grant recipient to submit records.

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that have been created during the preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the

Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

(d) The reporting procedures of this section are in lieu of any other general reporting requirements relating to private entities that receive State funds. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, s. 32G.1(d); 2006-168, s. 1.7; 2006-264, s. 69(f).)

Editor's Note. —
Session Laws 2006-264, s. 69(f) was repealed, pursuant to the terms of Session Laws 2006-264, s. 69(g), upon Session Laws 2006-168 becoming law.

Effect of Amendments. —
Session Laws 2006-168, s. 1.7, effective July 27, 2006, rewrote subsection (a); and added subsection (d).

§ 143B-437.59. Failure to comply with agreement.

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the business fails to comply with the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years:

(1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.

(2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant. (2002-172, s. 2.1(a); 2003-416, s. 2; 2006-168, s. 1.8.)

Effect of Amendments. — Session Laws 2006-168, s. 1.8, effective July 27, 2006, substituted "business fails to comply with" for "Committee amends" near the end of the second sentence of subsection (a); in subsection (b), substituted "years:" for "years, the Committee shall terminate the agreement." at the end of the introductory paragraph, and added subdivisions (b)(1) and (b)(2).

§ 143B-437.60. Disbursement of grant.

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require the business to provide any necessary evidence of compliance to verify that the terms of the agreement have been met. The Committee shall certify the grant amount for which the business is eligible under the agreement and the grant amount for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d). The Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee. (2002-172, s. 2.1(a); 2003-416, s. 2; 2006-168, s. 1.9.)

Effect of Amendments. — Session Laws 2006-168, s. 1.9, effective July 27, 2006, deleted "to the State Controller" following "certified" in the second sentence; substituted "require the business to provide any necessary evidence of compliance ot verify" for "verify this information and certify to the State Controller" in the middle of the fifth sentence; in the sixth sentence, substituted "shall certify the grant amount" for "shall further certify to the State Controller the amount of a grant" and "grant amount" for "amount of a grant"; and substituted "Department of Commerce" for "State Controller" in the last sentence.

§ 143B-437.61. Transfer to Industrial Development Fund.

At the time the Department of Commerce remits a check to a business under G.S. 143B-437.60, the Department of Commerce shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d). (2002-172, s. 2.1(a); 2003-416, s. 2; 2006-168, s. 1.10.)

Effect of Amendments. — Session Laws 2006-168, s. 1.10, effective July 27, 2006, substituted "Department of Commerce" for "State Controller" twice near the beginning of this section.

§ 143B-437.62. Expiration.

The authority of the Committee to enter into new agreements expires January 1, 2010. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, s. 32G.1(a); 2005-241, s. 3; 2006-168, s. 1.11.)

Effect of Amendments. — Session Laws 2006-168, s. 1.11, effective July 27, 2006, substituted "January 1, 2010" for "January 1, 2008" at the end of the section.

Part 2H. One North Carolina Fund.

§ 143B-437.71. One North Carolina Fund established as a special revenue fund.

(a) Establishment. — The One North Carolina Fund is established as a special revenue fund in the Department of Commerce.

(b) Purposes. — Moneys in the One North Carolina Fund may only be allocated pursuant to this subsection. Moneys may be allocated to local governments for use in connection with securing commitments for the recruitment, expansion, or retention of new and existing businesses and to the One North Carolina Small Business Account created pursuant to subsection (c) of this section in an amount not to exceed three million dollars ($3,000,000). Moneys in the One North Carolina Fund allocated to local governments shall be used for the following purposes only:

(1) Installation or purchase of equipment.
(2) Structural repairs, improvements, or renovations to existing buildings to be used for expansion.
(3) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for existing buildings.
(4) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations.
(5) Any other purposes specifically provided by an act of the General Assembly.

(c) There is created in the One North Carolina Fund a special account, the One North Carolina Small Business Account, to be used for the North Carolina SBIR/STTR Incentive Program and the North Carolina SBIR/STTR Matching Funds Program, as specified in Part 2I of Article 10 of Chapter 143B of the General Statutes. (2004-88, s. 1(d); 2005-276, s. 13.14(a); 2006-162, s. 19.)

Editor's Note. — Session Laws 2005-276, s. 13.6(b), as amended by Session Laws 2006-66, s. 12.2, provides: "Notwithstanding the provisions of G.S. 143B-437.71, of the funds appropriated in this act to the One North Carolina Fund, the Department of Commerce shall allocate one million dollars ($1,000,000) for the 2006-2007 fiscal year to Johnson and Wales University in Charlotte for the purpose of providing financial assistance to the University."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-162, s. 19, effective July 24, 2006, substituted "special revenue fund" for "nonreverting account" at the end of the section catchline.

Part 2J. Wine and Grape Growers Council.

§ 143B-437.90. North Carolina Wine and Grape Growers Council — Creation; powers and duties.

There is created the North Carolina Wine and Grape Growers Council of the

Department of Commerce. The North Carolina Wine and Grape Growers Council shall have the following powers and duties:

(1) To identify and implement methods for improving North Carolina's rank as a wine-producing State;
(2) To assure orderly growth and development of North Carolina's grape and wine industry;
(3) To achieve public awareness of the quality of North Carolina grapes and wine;
(4) To coordinate the interaction of North Carolina's grape and wine industry with other segments of the State's economy such as tourism, retail trade, and horticulture;
(5) To conduct methods of quality assurance of North Carolina's grape and wine industry to create a sound foundation for further growth;
(6) To assist in the coordination of the activities of the various State agencies and other organizations contributing to the development of the grape and wine industry;
(7) To receive and disburse funds;
(8) To enter into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;
(9) To contract for research services to improve viticultural and enological practices in North Carolina;
(10) To enter into agreements with any local, state, or national organizations or agency engaged in education for the purpose of disseminating information on wine or other viticultural projects;
(11) To enter into contracts with commercial entities for the purpose of developing marketing, advertising, and other promotional programs designed to promote the orderly growth of the North Carolina grape and wine industry;
(12) To acquire any licenses or permits necessary for performance of the duties of the Council; and
(13) To develop a State Viticulture Plan that identifies problems and constraints of the viticultural industry, proposes solutions to those problems and delineates planning mechanisms for the orderly growth of the industry. (1985 (Reg. Sess., 1986), c. 974, s. 1; 1997-261, s. 109; 2005-380, s. 4(a); 2006-264, s. 98.3.)

Editor's Note. —

Session Laws 2006-264, s. 98.3, rewrote the Part heading, which formerly read: "Grape Growers Council."

Effect of Amendments. —

Session Laws 2006-264, s. 98.3, effective August 27, 2006, inserted "Wine and" in the section catchline, and twice in the introductory paragraph.

§ 143B-437.91. North Carolina Wine and Grape Growers Council — Composition; terms; reimbursement.

(a) The North Carolina Wine and Grape Growers Council shall consist of 11 members appointed by the Secretary of Commerce in the following manner: seven commercial grape growers; three winery operators; and one retailer of North Carolina grape products. For purposes of this Article, a commercial grape grower is one who has at least three acres of grapes or sells ten thousand dollars ($10,000) worth of grapes annually. The Secretary shall appoint members for staggered four-year terms. Members shall serve until their successors are appointed and qualified. Any member of the Council may be reappointed for additional terms. Any appointment to fill a vacancy on the Council shall be for the balance of the unexpired term. Any member of the

Council may be removed by the Secretary for misfeasance, malfeasance, or nonfeasance.

(b) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the operation of the Council.

(c) All clerical and other services required by the Council may be provided by the Department of Commerce.

(d) The Secretary of Commerce shall appoint a chair who shall serve at the pleasure of the Secretary.

(e) The Council may select a secretary who need not be a member of the Council.

(f) The Council shall meet when necessary as determined by the chair or upon written request of a majority of the members.

(g) A majority of the Council shall constitute a quorum for the transaction of business. (1985 (Reg. Sess., 1986), c. 974, s. 1; 1997-261, s. 109; 2005-380, s. 4(a); 2006-264, s. 98.3.)

Effect of Amendments. —
Session Laws 2006-264, s. 98.3, effective August 27, 2006, inserted "Wine and" in the section catchline, and in the first sentence of subsection (a).

Part 10. North Carolina State Ports Authority.

§ 143B-454. Powers of Authority.

(a) **(Effective until July 1, 2007)** In order to enable it to carry out the purposes of this Part, the said Authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;

(3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Part, all or any of them;

(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of beltline roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, and to acquire, construct, and maintain, but not operate, such rail facilities as may be necessary or useful in connection with the operation of the State Ports, provided that nothing in this subdivision shall be construed as requiring or allowing the North Carolina State Ports Authority to become a carrier by rail subject to the federal laws regulating those carriers;

(5) The Authority shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other em-

G.S. 143B-454(a) is set out twice. See note.

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ployees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and two other members elected annually by the Authority. The executive committee shall be vested with authority to do all acts which are authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected;

(6) Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this Part;

(7) Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this Part;

(8) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof;

(10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

(11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business. The Authority may establish fees for its services. In establishing these fees, the Authority shall consider the cost of providing service, revenue requirements, the cost of similar services at other seaports in the South Atlantic region, and any other factors it considers relevant. The Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations no later than 30 business days after it establishes or increases the fee.

(12) Be authorized and empowered to do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section mentioned; and

(13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Part: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon.

G.S. 143B-454(a) is set out twice. See note.

Prior to taking any action under this subsection, the Authority may consult with the Advisory Budget Commission.

(a) **(Effective July 1, 2007)** In order to enable it to carry out the purposes of this Part, the said Authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;

(3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Part, all or any of them;

(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of beltline roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, and to acquire, construct, and maintain, but not operate, such rail facilities as may be necessary or useful in connection with the operation of the State Ports, provided that nothing in this subdivision shall be construed as requiring or allowing the North Carolina State Ports Authority to become a carrier by rail subject to the federal laws regulating those carriers;

(5) The Authority shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and two other members elected annually by the Authority. The executive committee shall be vested with authority to do all acts which are authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected;

(6) Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this Part;

(7) Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this Part;

(8) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and

G.S. 143B-454(a) is set out twice. See note.

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to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof;

(10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

(11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business. The Authority may establish fees for its services. In establishing these fees, the Authority shall consider the cost of providing service, revenue requirements, the cost of similar services at other seaports in the South Atlantic region, and any other factors it considers relevant. The Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations no later than 30 business days after it establishes or increases the fee.

(12) Be authorized and empowered to do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section mentioned; and

(13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Part: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon.

(b) In order to execute the powers enumerated in subsection (a), the Authority shall determine the policies of the North Carolina State Ports Authority by majority vote of all members of the Authority present and voting. Once a policy is determined, the Authority shall communicate it to the Executive Director, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Authority shall have responsibility or authority to give operational directives to any employee of the North Carolina State Ports Authority other than the Executive Director. (1945, c. 1097, s. 3; 1949, c. 892, s. 2; 1953, c. 191, s. 5; 1959, c. 523, ss. 3-5; 1975, c. 716, s. 2; 1977, c. 65, s. 2; c. 198, ss. 7, 9; c. 802, s. 50.45; 1979, c. 159, s. 3; 1981 (Reg. Sess., 1982), c. 1181, s. 2; 1983, c. 717, s. 84; 1985, c. 479, s. 219; 1985 (Reg. Sess., 1986), c. 955, ss. 102, 103; 1987, c. 275, ss. 1, 2; 1989, c. 273, s. 1; 2002-99, s. 7(a); 2002-126, s. 6.6(c); 2006-203, s. 109.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2007. The second version of subsection (a) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 109, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last paragraph in subsection (a), which read: "Prior to taking any action under this subsection, the Authority may consult with the Advisory Budget Commission."

§ 143B-456. Issuance of bonds and notes.

(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance or operation of any facility, building, structure or any other matter or thing which the Authority is authorized to acquire, construct, equip, maintain, or operate, all or any of them, including authorized special user projects, the Authority is hereby authorized, at one time or from time to time, to borrow money and in evidence thereof to issue bonds, notes and other obligations of the Authority as provided in this Part. Bonds, notes and other obligations may also be issued to (i) establish such reserves as the Authority may determine to be desirable including, without limitation, a debt service reserve fund, and (ii) provide for interest during the estimated period of construction and for a reasonable period thereafter and to provide for working capital.

The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues, income or assets of the Authority. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Authority at such price or prices and under such terms and conditions as may be determined by the Authority. Any such bonds or notes shall bear interest at such rate or rates, including variable rates, as may be determined by the Authority. Such bonds or notes shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Authority.

(b) **(Effective until July 1, 2007)** Prior to the sale and delivery of any bonds or notes by the Authority, the Governor shall approve the general purposes of and the general security provisions for any such bonds or notes. Such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Authority shall determine. Bonds or notes may be issued under the provisions of this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Part and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. Prior to taking any action under this subsection, the Governor may consult with the Advisory Budget Commission.

(b) **(Effective July 1, 2007)** Prior to the sale and delivery of any bonds or notes by the Authority, the Governor shall approve the general purposes of and the general security provisions for any such bonds or notes. Such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Authority shall determine. Bonds or notes may be issued under the provisions of this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Part and the

G.S. 143B-456(b) is set out twice. See note.

provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same.

(c) In the discretion of the Authority any obligations issued under the provisions of this Part may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State and, in the case of an authorized special user project, a deed of trust of which the trustee may be an individual who is a resident of the State. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of obligations, revenues or other money under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. The pledge of any assets, income or revenues of the Authority to the payment of the principal of or the interest on any obligations of the Authority shall be valid and binding from the time when the pledge is made and any such assets, income or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

(d) The resolution authorizing any obligations or the trust agreement securing the same may provide that any moneys held pursuant thereto may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Part and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Authority may be invested as provided in G.S. 159-30 or any successor provision thereof.

(e) Obligations issued under the provisions of this Part are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law.

(f) The Authority is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this Part, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Authority, for any corporate purpose of the Authority. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this Part which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this Part and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations.

(g) Any obligations issued by the Authority under the provisions of this Part shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income.

(h) Obligations issued under the provisions of this Part shall not be deemed to constitute a debt, liability or obligation of the State or of any other public body in the State secured by a pledge of the faith and credit of the State or of any other public body in the State, respectively, but shall be payable solely from the revenues, income or assets of the Authority pledged thereto. Each obligation issued under this Part shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same or the interest thereon except from the revenues, income or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any other public body in the State is pledged to the payment of the principal of or the interest on such obligation. (1945, c. 1097, s. 4; 1975, c. 716, s. 2; 1977, c. 198, s. 9; 1979, c. 159, s. 4; 1981, c. 856, s. 1; 1981 (Reg. Sess., 1982), c. 1181, s. 1; 1985 (Reg. Sess., 1986), c. 955, ss. 104, 105; 1987, c. 275, s. 3; 1995, c. 46, s. 16; 2006-203, s. 110.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2007. The second version of subsection (b) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 110, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last sentence in subsection (b), which read: "Prior to taking any action under this subsection, the Governor may consult with the Advisory Budget Commission."

Part 19. Small Business Contractor Act. (Expired).

§§ 143B-472.85 through 143B-472.97: Expired.

Editor's Note. — This Part expired June 30, 2006, pursuant to the terms of Session Laws 2002-181, s. 2(b), which provided: "This act expires June 30, 2006. The expiration of this act does not affect prosecutions for offenses committed before that date, and the statutes that would be applicable but for this act remain applicable to those prosecutions. The expiration of this act does not affect any guarantees or bonds executed prior to the expiration."

ARTICLE 12.

Department of Juvenile Justice and Delinquency Prevention.

Part 2. General Provisions.

§ 143B-515. Definitions.

Implementation of Treatment Staffing Model at Youth Development Centers — Session Laws 2005-276, s. 16.6(a) through (c), as amended by Session Laws 2006-66, s. 15.6(a), provides: "(a) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight

Committee on the treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers. The report shall include a list of total positions at each facility by job class, whether the position is vacant or filled, whether positions were filled from internal employees or new employees, and the training and certification status of each position. The report shall also describe the nature of the treatment program, the criteria for evaluating the program, and how the program is performing in comparison to these criteria. The report shall also describe the training approach to be used to train staff in using treatment methods in youth development centers and provide information on current staff training and staff training planned for the next quarter. The Department shall also develop indicators for evaluating staff performance once the model has been implemented.

"(b) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers. The Department shall identify the number of positions reallocated to the new treatment job classes and the source of funding for those positions.

"(c) The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee by November 10, 2006, on the final recommended staffing plan for youth development centers for the 2007-2008 fiscal year. The report shall include:

"(1) The latest results of the evaluation of the pilot treatment staffing models at the Samarkand and Stonewall Jackson Youth Development Centers and the progress in implementing the model at other youth development centers.

"(2) The total recommended staffing by position classification for each youth development center. Staffing by shift shall be provided for each housing unit as well as justification for the level and type of staff on each shift.

"(3) The total cost and cost per bed for each youth development center to implement the staffing model.

"(4) The primary basis for the number of staff at each youth development center by classification.

"(5) An identification of other states that have implemented a treatment based staffing model, how the staffing patterns compare to the Department of Juvenile Justice and Delinquency Prevention proposal, and any research on the benefits and outcomes of using the treatment based approach in these states."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143B-516. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.

(a) The head of the Department is the Secretary. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that youth development centers be phased out as populations diminish.

(2) **(Effective until July 1, 2007)** Close a State youth development center when its operation is no longer justified and transfer State funds appropriated for the operation of that youth development center to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing

G.S. 143B-516(b)(2) is set out twice. See note.

youth development centers, provided the Advisory Budget Commission reviews this action.

(2) **(Effective July 1, 2007)** Close a State youth development center when its operation is no longer justified and transfer State funds appropriated for the operation of that youth development center to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing youth development centers, after consultation with the Joint Legislative Commission on Governmental Operations.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding, on a matching basis, juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Develop and administer a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles. The plan shall include attendance at appropriate professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(17a) Set, in consultation with the Office of State Personnel, the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are employed at juvenile facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subdivision shall be construed to include "merit pay" under the term "salary supplement".

(18) Designate persons, as necessary, as State juvenile justice officers, to provide for the care and supervision of juveniles placed in the physical custody of the Department.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the Secretary shall prescribe the functions, powers, duties, and obligations of every agency or division in the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations. The Department may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. In developing the model, the Department shall consider the recommendations of the State Advisory Council on Juvenile Justice and Delinquency Prevention. (1998-202, ss. 1(b), 2(b), 2(f); 1998-217, ss. 57(2), 57(3); 2000-137, s. 1(b); 2001-95, s. 5; 2001-490, s. 2.40; 2003-284, s. 17.2(a); 2005-276, s. 29.19(b); 2006-203, s. 111.)

Subdivision (b)(2) Set Out Twice. — The first version of subdivision (b)(2) set out above is effective until July 1, 2007. The second version of subdivision (b)(2) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2005-276, s. 16.3(a)-(c), as amended by Session Laws 2006-66, s. 15.1, provides: "(a) Project Challenge North Carolina, Inc., shall report to the Chairs of the

Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by April 1 each year on the operation and the effectiveness of its program in providing alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The report shall include information on:

"(1) The source of referrals for juveniles.

"(2) The types of offenses committed by juveniles participating in the program.

"(3) The amount of time those juveniles spend in the program.

"(4) The number of juveniles who successfully complete the program.

"(5) The number of juveniles who commit additional offenses after completing the program.

"(6) The program's budget and expenditures, including all funding sources.

"(b) The Juvenile Assessment Center shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the effectiveness of the Center by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of juvenile assessment plans and services provided as a result of these plans. In addition, the report shall include information on the Center's budget and expenditures, including all funding sources.

"(c) Communities in Schools shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Joint Legislative Education Oversight Committee by April 1 each year on the operation and effectiveness of its program. The report shall include information on:

"(1) The number of children served.

"(2) The number of volunteers used.

"(3) The impact on children who have received services from Communities in Schools.

"(4) The program's budget and expenditures, including all funding sources."

Session Laws 2005-276, s. 16.4, as amended by Session Laws 2006-66, s. 15.4, provides: "The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the Eckerd and Camp Woodson wilderness camp programs, the teen court programs, the program that grants funds to the local organizations of the Boys and Girls Clubs established pursuant to Section 21.10 of S.L. 1999-237, the Save Our Students program, the Governor's One-on-One Programs, and multipurpose group homes. The teen court report shall include statistical information on the number of juveniles served, the number and type of offenses considered by teen courts, referral sources for teen courts, and the number of juveniles that become court-involved after participation in teen courts. The report on the Boys and Girls Clubs program shall include information on:

"(1) The expenditure of State appropriations on the program;

"(2) The operations and the effectiveness of the program; and

"(3) The number of juveniles served under the program.

"In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department shall also identify whether the programs are achieving the goals and objectives of the Juvenile Justice Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the Subcommittees on Justice and Public Safety of the House of Representatives and Senate Appropriations Committees by March 1 of each year."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 111, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "after consultation with the Joint Legislative Commission on Governmental Operations" for "provided the Advisory Budget Commission reviews this action" at the end of subdivision (b)(2).

Part 3. Juvenile Facilities.

§ 143B-525. Juvenile facilities.

Implementation of Treatment Staffing Model at Youth Development Centers. — Session Laws 2005-276, s. 16.6(a) through (c), as amended by Session Laws 2006-66, s. 15.6(a), provides: "(a) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers. The report shall include a list of total positions at each facility by job class, whether the position is vacant or filled, whether positions were filled from internal employees or new employees, and the training and certification status of each position. The report shall also describe the nature of the treatment program, the criteria for evaluating the program, and how the program is performing in comparison to these criteria. The report shall also describe the training approach to be used to train staff in using treatment methods in youth development centers and provide information on current staff training and staff training planned for the next quarter. The Department shall also develop indicators for evaluating staff performance once the model has been implemented.

"(b) The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers. The Department shall identify the number of positions reallocated to the new treatment job classes and the source of funding for those positions.

"(c) The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee by November 10, 2006, on the final recommended staffing plan for youth development centers for the 2007-2008 fiscal year. The report shall include:

"(1) The latest results of the evaluation of the pilot treatment staffing models at the Samarkand and Stonewall Jackson Youth Development Centers and the progress in implementing the model at other youth development centers.

"(2) The total recommended staffing by position classification for each youth development center. Staffing by shift shall be provided for each housing unit as well as justification for the level and type of staff on each shift.

"(3) The total cost and cost per bed for each youth development center to implement the staffing model.

"(4) The primary basis for the number of staff at each youth development center by classification.

"(5) An identification of other states that have implemented a treatment based staffing model, how the staffing patterns compare to the Department of Juvenile Justice and Delinquency Prevention proposal, and any research on the benefits and outcomes of using the treatment based approach in these states."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Part 6. Juvenile Crime Prevention Councils.

§ 143B-550. Funding for programs.

Editor's Note. —

Session Laws 2005-276, s. 16.11(d), as added by Session Laws 2006-66, s. 15.5, provides: "The requirements of this section apply to all future allocations by the Department of Juvenile Justice and Delinquency Prevention of the funds appropriated to the Department by Section 16.11 of S.L. 2005-276 and Section 16.7 of S.L. 2004-124."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Chapter 143C.

State Budget Act.

(Effective July 1, 2007)

Article 1.

General Provisions.

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143C-1-1. (Effective July 1, 2007) Purpose and definitions.

143C-1-2. (Effective July 1, 2007) Appropriations: constitutional requirement; reversions.

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143C-2-1. (Effective July 1, 2007) Governor is Director of the Budget.

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Article 3.

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143C-5-2. (Effective July 1, 2007) Order of appropriations bills.

143C-5-3. (Effective July 1, 2007) Availability statement required.

143C-5-4. (Effective July 1, 2007) Enactment deadline.

143C-5-5. (Effective July 1, 2007) Committee report used to construe intent of budget acts.

Article 6.

Administration of the Budget.

Part 1. Certification and Administration of the Budget.

143C-6-1. (Effective July 1, 2007) Budget enacted by the General Assembly; certified budgets of State agencies.

143C-6-2. (Effective July 1, 2007) Methods to avoid deficit.

143C-6-3. (Effective July 1, 2007) Allotments.

143C-6-4. (Effective July 1, 2007) Budget Adjustments Authorized.

143C-6-5. (Effective July 1, 2007) No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation; no fee increases that the General Assembly has rejected.

143C-6-6. (Effective July 1, 2007) Positions included in the State Payroll.

Sec.

143C-6-7. (Effective July 1, 2007) Compliance with Chapter and appropriations acts by State agencies.

143C-6-8. (Effective July 1, 2007) State agencies may incur financial obligations only if authorized by the Director of the Budget and subject to the availability of appropriated funds.

143C-6-9. (Effective July 1, 2007) Use of lapsed salary savings.

143C-6-10. [Reserved.]

Part 2. Highway Appropriations.

143C-6-11. (Effective July 1, 2007) Highway appropriation.

143C-6-12 through 143C-6-20. [Reserved.]

Part 3. Non-State Entities Receiving State Funds.

143C-6-21. (Effective July 1, 2007) Payments to nonprofits.

143C-6-22. (Effective July 1, 2007) Use of State funds by non-State entities.

143C-6-23. (Effective July 1, 2007) State grant funds: administration; oversight and reporting requirements.

Article 7.

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143C-7-1. (Effective July 1, 2007) Funds creating an obligation.

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Article 8.

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143C-8-1. (Effective July 1, 2007) Legislative intent; purpose.

143C-8-2. (Effective July 1, 2007) Capital facilities inventory.

143C-8-3. (Effective July 1, 2007) Capital improvement needs criteria.

143C-8-4. (Effective July 1, 2007) Agency capital improvement needs estimates.

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143C-8-6. (Effective July 1, 2007) Recommendations for capital improvements set forth in the Recommended State Budget.

Sec.

143C-8-7. (Effective July 1, 2007) When a State agency may begin a capital improvement project.

143C-8-8. (Effective July 1, 2007) When a State agency may increase the cost of a capital improvement project.

143C-8-9. (Effective July 1, 2007) When a State agency may change the scope of a capital improvement project.

143C-8-10. (Effective July 1, 2007) Project Reserve Account.

143C-8-11. (Effective July 1, 2007) Reversion of appropriation and lapse of project authorization.

143C-8-12. (Effective July 1, 2007) University system capital improvement projects from sources that are not General Fund sources: approval of new project or change in scope of existing project.

Article 9.

Special Funds and Fee Reports.

143C-9-1. (Effective July 1, 2007) Medicaid Special Fund; transfers to Department of Health and Human Services.

143C-9-2. (Effective July 1, 2007) Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs.

143C-9-3. (Effective July 1, 2007) Settlement Reserve Fund.

143C-9-4. (Effective July 1, 2007) Annual Fee Report.

143C-9-5. (Effective July 1, 2007) Assignment to the State of rights to tobacco manufacturer escrow funds.

143C-9-6. (Effective July 1, 2007) JDIG Reserve Fund.

Article 10.

Penalties.

143C-10-1. (Effective July 1, 2007) Offenses for violation of Chapter.

143C-10-2. (Effective July 1, 2007) Civil liability for violation of Chapter.

143C-10-3. (Effective July 1, 2007) Suspension from office or impeachment for refusal to comply with Chapter.

ARTICLE 1.

General Provisions.

§ 143C-1-1. (Effective July 1, 2007) Purpose and definitions.

(a) Title of Chapter. — This Chapter is the "State Budget Act" and may be cited by that name.

(b) The provisions of this Chapter shall apply to every State agency and to every non-State entity that receives or expends any State funds. No State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of this Chapter. The provisions of Chapter 120 of the General Statutes shall continue to apply to the General Assembly and to control its expenditures and in the event of a conflict with this Chapter, the provisions of Chapter 120 of the General Statutes shall control. Nothing in this Chapter abrogates or diminishes the inherent power of the legislative, executive, or judicial branch.

(c) Purpose. — This Chapter establishes procedures for the following:
(1) Preparing the recommended State budget.
(2) Enacting the State budget.
(3) Administering the State budget.

(d) Definitions. — The following definitions apply in this Chapter:
(1) Appropriation. — An enactment by the General Assembly authorizing the withdrawal of money from the State treasury. An enactment by the General Assembly that authorizes, specifies, or otherwise provides that funds may be used for a particular purpose is not an appropriation.
(2) Biennium. — The two fiscal years beginning on July 1 of each odd-numbered year and ending on June 30 of the next odd-numbered year.
(3) Budget. — A plan to provide and spend money for specified programs, functions, activities, or objects during a fiscal year.
(4) Budget year. — The fiscal year for which a budget is proposed and enacted.
(5) Capital improvement. — A term that includes real property acquisition, new construction or rehabilitation of existing facilities, and repairs and renovations.
(6) Capital Improvements Appropriations Act. — An act of the General Assembly containing appropriations for one or more capital improvement projects.
(7) Certified budget. — The budget as enacted by the General Assembly including adjustments made for (i) distributions to State agencies from statewide reserves appropriated by the General Assembly, (ii) distributions of reserves appropriated to a specific agency by the General Assembly, and (iii) organizational or budget changes directed by the General Assembly but left to the Director to carry out.
(8) Controller. — The Office of the State Controller.
(9) Current Operations Appropriations Act. — An act of the General Assembly estimating revenue availability for and appropriating money for the current operations of State government during one or more budget years.
(10) Departmental receipt. — Fees, licenses, federal funds, grants, fines, penalties, tuition, and other similar collections or credits generated by State agencies in the course of performing their governmental functions that are applied to the cost of a program administered by the

State agency or transferred to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.1, and that are not defined as tax proceeds or nontax revenues. Departmental receipts may include moneys transferred into a fiscal year from a prior fiscal year.

(11) Director. — The Director of the Budget, who is the Governor.

(12) Encumbrance. — A financial obligation created by a purchase order, contract, salary commitment, unearned or prepaid collections for services provided by the State, or other legally binding agreement.

(13) Fiscal period. — A fiscal biennium beginning in odd-numbered years or the first or second fiscal year within a fiscal biennium.

(14) Fiscal year. — The annual period beginning July 1 and ending on the following June 30.

(15) Fund. — A fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on stated programs, activities, and objectives of State government.

(16) General Fund Operating Budget. — The sum of all appropriations from the General Fund for a fiscal year, except appropriations for (i) capital improvements, including repairs and renovations, and (ii) one-time expenditures due to natural disasters or other emergencies shall not be included.

(17) Information technology. — As defined in G.S. 147-33.81(2).

(18) Non-State entity. — Any of the following that is not a State agency: an individual, a firm, a partnership, an association, a county, a corporation, or any other organization or group acting as a unit. The term includes a unit of local government and public authority.

(19) Nontax revenue. — Revenue that is not a tax proceed and that is required by statute to be credited to the General Fund.

(20) Object or line item. — An expenditure or receipt in a recommended or enacted budget that is designated in the Budget Code Structure of the North Carolina Accounting System Uniform Chart of Accounts prescribed by the Office of the State Controller.

(21) Performance information. — The organizational structure, agency activity statements, performance indicators, and analyses of program efficiency and effectiveness.

(22) Public authority. — A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(23) Purpose or program. — A group of objects or line items for support of a specific activity outlined in a recommended or enacted budget that is designated by a nine-digit fund code in accordance with the Budget Code Structure of the North Carolina Accounting System Uniform Chart of Accounts prescribed by the Office of the State Controller.

(24) State agency. — A unit of the executive, legislative, or judicial branch of State government, such as a department, an institution, a division, a commission, a board, a council, or The University of North Carolina. The term does not include a unit of local government or a public authority.

(25) State funds. — Any moneys including federal funds deposited in the State treasury except moneys deposited in a trust fund or agency fund as described in G.S. 143C-1-3.

(26) State resources. — All financial and nonfinancial assets of the State.

(27) State revenue. — An increase, other than interfund transfers and debt issue proceeds, in the financial assets of any State governmental or proprietary fund.

(28) Statutory appropriation. — An appropriation that authorizes the withdrawal of funds from the State treasury during fiscal years extending beyond the current fiscal biennium, without further act of the General Assembly.

(29) Unit of local government. — A municipal corporation that has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(30) Unreserved fund balance. — The available General Fund cash balance effective June 30 after excluding documented encumbrances, unearned revenue, federal grants, statutory requirements, and other legal obligations to General Fund cash as determined by the State Controller. Beginning unreserved fund balance equals ending unreserved fund balance from the prior fiscal year. (2006-66, s. 6.19(h); 2006-203, s. 3; 2006-221, s. 3A; 2006-259, s. 40(h).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, makes this Chapter effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-259, s. 40(h) was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Effect of Amendments. — Session Laws 2006-66, s. 6.19(h), as added by Session Laws 2006-221, s. 3A, effective July 1, 2007, added the last two sentences to subsection (b).

CASE NOTES

Editor's Note. — *The annotations below were decided under former G.S. 143-2 and 143-16.*

Art Museum Building Commission. — There is nothing in this Article or G.S. 143B-58 which indicates a legislative intent to exempt the Art Museum Building Commission from the requirements of this Article. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

OPINIONS OF ATTORNEY GENERAL

Whether private donations to the State or its agencies are or are not subject to this Article, the Executive Budget Act, depends upon the nature of the gift and the particular terms and directions of the donor. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

Student activity fees, which are assessed from students of the Schools for the Deaf pursuant to G.S. 115C-126.1 (see now 143B-216.44), are "State funds" and are subject to the fiscal control of this Article, the Executive Budget Act. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

Patient funds held by institutions operated by the Division of Mental Health, either in its capacity as representative payee of the patient's Social Security income or as trustee of other personal funds received voluntarily from the patient or on his behalf, are not "State funds" and are not subject to this Article, the Executive Budget Act, or fiscal policies adopted pursuant to the Act. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

"Enterprise funds," established for the enhancement of vocational rehabilitation services for clients of State-operated sheltered workshops, are "State funds" and are subject to the fiscal control of this Article, the Executive Budget Act. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, 56 N.C.A.G. 10 (1986).

The Governor has authority to transfer money from the Wireless 911 Fund to avoid a budget deficit, although it is within his discretion as to whether to do so. See opinion of Attorney General to Mr. Charles B. Archer, Vice Chair, North Carolina Wireless 911 Board, 2001 N.C. AG LEXIS 39 (6/29/01).

§ 143C-1-2. (Effective July 1, 2007) Appropriations: constitutional requirement; reversions.

(a) Appropriation Required to Withdraw State Funds From the State Treasury. — In accordance with Section 7 of Article V of the North Carolina Constitution, no money shall be drawn from the State treasury but in consequence of appropriations made by law. A law enacted by the General Assembly that authorizes the expenditure of money from the State treasury is an appropriation; however, an enactment by the General Assembly that authorizes, specifies, or otherwise provides that funds may be used for a particular purpose is not an appropriation.

(b) Reversions. — Unless otherwise provided by law, at the end of the fiscal year the unexpended, unencumbered balance of an appropriation reverts to the fund from which the appropriation was made; except that (i) an appropriation to the General Assembly shall not revert unless otherwise provided by the Legislative Services Commission, (ii) an appropriation for a capital improvement project shall revert as provided by G.S. 143C-8-11, and (iii) an appropriation for the implementation of information technology (IT) projects shall not revert until the project is implemented or abandoned. (2006-203, s. 3.)

§ 143C-1-3. (Effective July 1, 2007) Fund types.

(a) Types. — The Controller shall account for State resources through use of the fund types listed in this subsection. The Controller may not establish a fund type that differs from the listed fund types unless the Governmental Accounting Standards Board has approved the use of the different fund type.

The fund types are described as follows, except that where a conflict exists between a description used in this section and the definition of the corresponding fund type issued by the Governmental Accounting Standards Board, it is presumed that the definition issued by the Governmental Accounting Standards Board shall prevail.

Governmental Funds.

(1) Capital Projects Funds. — Accounts for financial resources to be used for the acquisition or construction of major capital facilities other than those financed by proprietary funds or in trust funds for individuals, private organizations, or other governments. Capital outlays financed from general obligation bond proceeds should be accounted for through a capital projects fund.

(2) Debt Service Funds. — Accounts for the accumulation of resources for, and the payment of, general long-term debt principal and interest.

(3) General Fund. — Accounts for all financial resources except those required to be reported in another fund.

(4) Special Revenue Funds. — Accounts for the proceeds of specific revenue sources, other than trusts for individuals, private organizations, or other governments or for major capital projects, that are legally restricted to expenditure for specified purposes.

(5) Permanent Funds. — Accounts for resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs.

Proprietary Funds.

(6) Enterprise Funds. — Accounts for any activity for which a fee is charged to external users for goods or services. Activities are required to be reported as enterprise funds if any one of the following criteria is met. Each of these criteria should be applied in the context of the activity's principal revenue sources.

a. The activity is financed with debt that is secured solely by a pledge of the net revenues from fees and charges of the activity.

b. Laws or regulations require that the activity's costs of providing services, including capital costs, be recovered with fees and charges rather than with taxes or similar revenues.

c. The pricing policies of the activity establish fees and charges designed to recover its costs, including capital costs.

(7) Internal Service Funds. — Accounts for any activity that provides goods or services to other funds, departments, or agencies of the primary government and its component units, or to other governments, on a cost-reimbursement basis. Internal service funds should be used only if the reporting government is the predominant participant in the activity. Otherwise, the activity should be reported as an enterprise fund.

Agency and Trust Funds.

(8) Agency Funds. — Accounts for resources held by the reporting government in a purely custodial capacity. Agency funds typically involve only the receipt, temporary investment, and remittance of fiduciary resources to individuals, private organizations, or other governments.

(9) Investment Trust Funds. — Accounts for the external portion of investment pools reported by the sponsoring government.

(10) Pension and Other Employee Benefit Trust Funds. — Accounts for resources that are required to be held in trust for the members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other employee benefit plans.

(11) Private-Purpose Trust Funds. — Accounts for all other trust arrangements under which principal and income benefit individuals, private organizations, or other governments.

(b) Designation. — If State resources are designated by law as a fund or an account within a fund and there is a conflict between the legal designation and the appropriate accounting designation of the State resources, then the Controller shall determine the appropriate designation of the State resources based on the intended use and financial treatment of the State resources as set out in the law establishing the fund or account. The Controller shall determine the fund type of all separate funds and account for them accordingly. The Controller shall keep the total number of funds to the minimum number practical.

(c) Notwithstanding subsections (a) and (b) of this section, funds established for The University of North Carolina and its constituent institutions pursuant to the following statutes are exempt from Chapter 143C of the General Statutes and shall be accounted for as provided by those statutes, except that the provisions of Article 8 of Chapter 143C of the General Statutes shall apply to the funds: G.S. 116-35, 116-36, 116-36.1, 116-36.2, 116-36.4, 116-36.5, 116-36.6, 116-44.4, 116-68, 116-220, 116-235, 116-238. (2006-203, s. 3.)

§ 143C-1-4. (Effective July 1, 2007) Interest earnings credited to the General Fund; interest earnings on Highway Fund and Highway Trust Fund credited to those funds.

(a) Interest Earnings Credited to the General Fund. — Unless otherwise provided by law, interest earned on all funds shall be credited to the General Fund.

(b) Exception for Interest Earnings on Highway Fund and Highway Trust Fund. — Interest earned by the Highway Fund and the Highway Trust Fund shall be credited to the Highway Fund and the Highway Trust Fund respectively. (2006-203, s. 3.)

ARTICLE 2.

Director of the Budget.

§ 143C-2-1. (Effective July 1, 2007) Governor is Director of the Budget.

(a) Governor is Director of the Budget. — The Governor is the Director of the Budget. In that capacity, the Governor is required by Article III, Section 5(3) of the North Carolina Constitution to prepare and recommend a budget and to administer the budget as enacted by the General Assembly. The Governor's powers under this Chapter extend to all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known. The Governor may delegate the authority to perform a power or duty of the Director under this Chapter to the Office of State Budget and Management or to one or more persons.

(b) State Agencies and Non-State Entities to Provide Information Requested by the Director; Examination of Persons and Agencies by Director. — Upon request, all State agencies and non-State entities subject to this act shall furnish the Director, in the form and at the time requested by the Director, any information desired by the Director in relation to their respective activities or fiscal affairs so long as the information is not confidential pursuant to federal or State law. The Director may subpoena and examine under oath any person directly or indirectly responsible for the operations of any executive State agency or any non-State entity subject to the provisions of this Chapter.

(c) Governor May Request State Auditor to Audit State Agency or Non-State Entity Receiving State Funds. — As authorized by G.S. 147-64.6(c)(3), the Governor may request the State Auditor to make an audit of or cause an audit to be made of the books and accounts of any State agency and may require that the cost of the audit be borne by the State agency. The Governor may also request the State Auditor to make an audit of or cause an audit to be made of the books and records of any non-State entity receiving State funds pursuant to the State Auditor's authority granted in G.S. 147-64.7. (2006-203, s. 3.)

§ 143C-2-2. (Effective July 1, 2007) Collection of State Budget Statistics.

The Director shall coordinate the efforts of governmental agencies to collect, disseminate, and analyze economic, demographic, and social statistics pertinent to State budgeting. The Director shall do all of the following:

(1) Prepare and release the official demographic and economic estimates and projections for the State.

(2) Conduct special economic and demographic analyses and studies to support statewide budgeting.
(3) Develop and coordinate cooperative arrangements with federal, State, and local governmental agencies to facilitate the exchange of data to support State budgeting.
(4) Report major trends that influence revenues and expenditures in the State budget in the current fiscal year and that may influence revenues and expenditures over the next five fiscal years. (2006-203, s. 3.)

§ 143C-2-3. (Effective July 1, 2007) Fiscal analysis required for any State agency bill that affects the budget.

A State agency proposing a bill that affects the State budget shall prepare a fiscal analysis for the bill and submit the analysis to the Fiscal Research Division upon introduction of the bill. The fiscal analysis shall estimate the impact of the legislation on the State budget for the first five fiscal years the legislation would be in effect. (2006-203, s. 3.)

§ 143C-2-4. (Effective July 1, 2007) Director of the Budget may direct State Treasurer to borrow money for certain payments.

The Director of the Budget, by and with the consent of the Governor and Council of State, may authorize and direct the State Treasurer to borrow in the name of the State, in anticipation of the collection of taxes, such sum as may be necessary to make the payments on the appropriations as even as possible and to preserve the best interest of the State in the conduct of the various State agencies during each fiscal year. (2006-203, s. 3.)

Article 3.

Development of the Governor's Recommended Budget.

§ 143C-3-1. (Effective July 1, 2007) Budget estimate for the legislative branch.

The Legislative Services Officer shall give the Director an estimate of the financial needs of the legislative branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the legislative branch shall be approved and certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include the estimates in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget submitted to the General Assembly. (2006-66, s. 6.19(g); 2006-203, s. 3; 2006-221, s. 3A; 2006-259, s. 40(g).)

Editor's Note. — Session Laws 2006-259, s. 40(g) was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Effect of Amendments. — Session Laws 2006-66, s. 6.19(g), as added by Session Laws 2006-221, s. 3A, effective July 1, 2007, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in the first sentence.

§ 143C-3-2. (Effective July 1, 2007) Budget estimate for the judicial branch.

The Administrative Officer of the Courts shall give the Director an estimate of the financial needs of the judicial branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the judiciary shall be approved and certified by the Chief Justice. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include these estimates in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget submitted to the General Assembly. (2006-203, s. 3.)

§ 143C-3-3. (Effective July 1, 2007) Budget requests from State agencies in the executive branch.

(a) General Provisions. — A State agency that is not in the legislative or judicial branch of government shall submit its budget requests for the upcoming fiscal period to the Director in accordance with the schedule prescribed by the Director. The Director shall give each State agency instructions to be used in estimating the funds required to provide necessary State government programs and capital improvements. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller and shall be approved and certified by the respective head or responsible officer of the agency submitting them.

(b) University of North Carolina System Request. — Notwithstanding subsections (c), (d), and (e) of this section, pursuant to G.S. 116-11 the Board of Governors shall prepare a unified budget request for all of the constituent institutions of The University of North Carolina, including repairs and renovations, capital fund requests, and information technology.

(c) Repairs and Renovations Funds Request. — In addition to any other information requested by the Director, any State agency proposing to repair or renovate an existing facility shall accompany that request with all of the following:

(1) A description of current deficiencies and proposed corrections with a review and evaluation of that proposal prepared by the Department of Administration.
(2) An estimate of project costs and cash flow requirements approved by the Department of Administration.
(3) A certification of project feasibility as described in G.S. 143-341.
(4) An explanation of the method by which the repair or renovation is to be financed.

(d) Capital Funds Request. — In addition to any other information requested by the Director, any State agency proposing to (i) acquire real property, (ii) construct a new facility, (iii) expand the building area (sq. ft.) of an existing facility, or (iv) rehabilitate an existing facility to accommodate new or expanded uses shall accompany that request with all of the following:

(1) An estimate of its space needs and other physical requirements, together with a review and evaluation of that estimate prepared by the Department of Administration.
(2) An estimate of project costs and cash flow requirements approved by the Department of Administration.
(3) A certification of project feasibility as described in G.S. 143-341.
(4) An explanation of the method by which the acquisition, construction, or rehabilitation is to be financed.
(5) An estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation.

(6) An estimate of revenues, if any, to be derived from the project, covering the first five years of operation.

This subsection does not apply to requests for State resources for railroad, highway, or bridge construction or renovation.

(e) Information Technology Request. — In addition to any other information requested by the Director, any State agency requesting significant State resources, as defined by the Director, for the purpose of acquiring or maintaining information technology shall accompany that request with all of the following:

(1) A statement of its needs for information technology and related resources, including expected improvements to programmatic or business operations, together with a review and evaluation of that statement prepared by the State Chief Information Officer.

(2) A statement setting forth the requirements for State resources, together with an evaluation of those requirements by the State Chief Information Officer that takes into consideration the State's current technology, the opportunities for technology sharing, the requirements of Article 3D of Chapter 147 of the General Statutes, and any other factors relevant to the analysis.

(3) A statement by the State Chief Information Officer that sets forth viable alternatives, if any, for meeting the agency needs in an economical and efficient manner.

(4) In the case of an acquisition, an explanation of the method by which the acquisition is to be financed.

This subsection shall not apply to requests submitted by the General Assembly, the Administrative Office of the Courts, or The University of North Carolina. (2006-203, s. 3.)

§ 143C-3-4. (Effective July 1, 2007) Budget requests from non-State entities.

Unless otherwise provided by law, budget requests from non-State entities shall be submitted to the Director or to a State agency designated by the Director. A State agency designated to receive a budget request from a non-State entity shall evaluate the request and forward its evaluation to the Director in accordance with procedures established by the Director. This section does not apply to the General Assembly or to actions of the General Assembly to appropriate funds to non-State entities. (2006-203, s. 3.)

§ 143C-3-5. (Effective July 1, 2007) Budget recommendations and budget message.

(a) Budget Proposals. — The Governor shall present budget recommendations to each regular session of the General Assembly at a mutually agreeable time to be fixed by joint resolution.

(b) Odd-Numbered Fiscal Years. — In odd-numbered years the budget recommendations shall include the following components:

(1) A Recommended State Budget setting forth goals for improving the State with recommended expenditure requirements, funding sources, and performance information for each State government program and for each proposed capital improvement. The Recommended State Budget may be presented in a format chosen by the Director, except that the Recommended State Budget shall clearly distinguish program continuation requirements, program reductions, program eliminations, program expansions, and new programs, and shall explain all proposed capital improvements in the context of the Six-Year

Capital Improvements Plan and as required by G.S. 143C-8-6. The Director shall include as continuation requirements the amounts the Director proposes to fund for the enrollment increases in public schools, community colleges, and the university system.

(2) A Budget Support Document showing, for each budget code and purpose or program in State government, accounting detail corresponding to the Recommended State Budget.

a. The Budget Support Document shall employ the North Carolina Accounting System Uniform Chart of Accounts adopted by the State Controller to show both uses and sources of funds and shall display in separate parallel columns all of the following: (i) actual expenditures and receipts for the most recent fiscal year for which actual information is available, (ii) the certified budget for the preceding fiscal year, (iii) the currently authorized budget for the preceding fiscal year, (iv) program continuation requirements for each fiscal year of the biennium, (v) proposed expenditures and receipts for each fiscal year of the biennium, and (vi) proposed increases and decreases.

b. The Budget Support Document shall include detailed information on recommended expenditures for capital improvements as required by G.S. 143C-8-6.

c. The Budget Support Document shall include accurate projections of receipts, expenditures, and fund balances. Estimated receipts, including tuition collected by university or community college institutions, shall be adjusted to reflect actual collections from the previous fiscal year, unless the Director recommends a change that will result in collections in the budget year that differ from prior year actuals, or the Director otherwise determines there is a more reasonable basis upon which to accurately project receipts. Revenue and expenditure detail provided in the Budget Support Document shall be no less detailed than the two-digit level in the North Carolina Accounting System Uniform Chart of Accounts as prescribed by the State Controller.

d. The Budget Support Document shall clearly identify all proposed expenditures supported by existing or proposed appropriations, including statutory appropriations.

(3) A Current Operations Appropriation Act that makes appropriations for each fiscal year of the upcoming biennium for the operating expenses of all State agencies as contained in the Recommended State Budget, together with a Capital Improvements Appropriations Act that authorizes any capital improvements projects.

(4) The biennial State Information Technology Plan as outlined in G.S. 147-33-72B to be consistent in facilitating the goals outlined in the Recommended State Budget.

(c) Even-Numbered Fiscal Years. — In even-numbered years, the Governor may recommend changes in the enacted budget for the second year of the biennium. These recommendations shall be presented as amendments to the enacted budget and shall be incorporated in a recommended Current Operations Appropriation Act and a recommended Capital Improvements Appropriations Act as necessary. Any recommended changes shall clearly distinguish program reductions, program eliminations, program expansions, and new programs, and shall explain all proposed capital improvements in the context of the Six-Year Capital Improvements Plan and as required by G.S. 143C-8-6. The Governor shall provide sufficient supporting documentation and accounting detail, consistent with that required by G.S. 143C-3-5(b), corresponding to the recommended amendments to the enacted budget.

(d) Funds Included in Budget. — Consistent with requirements of the North Carolina Constitution, Article 5, Section 7(a), the Governor's Recommended State Budget, together with the Budget Support Document, shall include recommended expenditures of State funds from all Governmental and Proprietary Funds, as those funds are described in G.S. 143C-1-3. Except where provided otherwise by federal law, funds received from the federal government become State funds when deposited in the State treasury and shall be classified and accounted for in the Governor's budget recommendations no differently than funds from other sources.

(e) Revenue Estimates. — The recommended Current Operations Appropriations Act shall contain a statement showing the estimates of General Fund availability, Highway Fund availability, and Highway Trust Fund availability upon which the Recommended State Budget is based.

(f) Budget Message. — The Governor's budget recommendations shall be accompanied by a written budget message that does all of the following:

(1) Explains the goals embodied in the recommended budget.
(2) Explains important features of the activities anticipated in the budget.
(3) Explains the assumptions underlying the statement of revenue availability.
(4) Sets forth the reasons for changes from the previous biennium or fiscal year, as appropriate, in terms of programs, program goals, appropriation levels, and revenue yields.
(5) Identifies anticipated sources of funding for major spending initiatives.
(6) Prepares a fiscal analysis that addresses the State's budget outlook for the upcoming five-year period. This fiscal analysis shall include detailed estimates for five years for any proposals to create new or significantly expand programs and for proposals to create new or change existing law.

(g) Different Gubernatorial Administrations. — For years in which there will be a change in gubernatorial administrations, the incumbent Governor shall complete the budget recommendations and budget message by December 15 and deliver them to the Governor-elect. (2006-203, s. 3.)

ARTICLE 4.

Budget Requirements.

§ 143C-4-1. (Effective July 1, 2007) Annual balanced budget.

The budget recommended by the Governor and the budget enacted by the General Assembly shall be balanced and shall include two fiscal years beginning on July 1 of each odd-numbered year. Each fiscal year and each fund shall be balanced separately. The budget for a fund is balanced when the beginning unreserved fund balance for the fiscal year, together with the projected receipts to the fund during the fiscal year, is equal to or greater than the sum of appropriations from the fund for that fiscal year. (2006-203, s. 3.)

§ 143C-4-2. (Effective July 1, 2007) Savings Reserve Account and appropriation of General Fund unreserved fund balance.

(a) Creation and Source of Funds. — The Savings Reserve Account is established as a reserve in the General Fund. The Controller shall reserve to the Savings Reserve Account one-fourth of any unreserved fund balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year.

(b) Use of Funds. — The Savings Reserve Account is a component of the unappropriated General Fund balance. Funds reserved to the Savings Reserve Account shall be available for expenditure only upon an act of appropriation by the General Assembly.

(c) Goal for Savings Reserve Account Balance. — The General Assembly recognizes the need to establish and maintain sufficient reserves to address unanticipated events and circumstances such as natural disasters, economic downturns, threats to public safety, health, and welfare, and other emergencies. It is a goal of the General Assembly and the State to accumulate and maintain a balance in the Savings Reserve Account equal to or greater than eight percent (8%) of the prior year's General Fund operating budget. (2006-203, s. 3.)

§ 143C-4-3. (Effective July 1, 2007) Repairs and Renovations Reserve Account.

(a) Creation and Source of Funds. — The Repairs and Renovations Reserve Account is established as a reserve in the General Fund. The State Controller shall reserve to the Repairs and Renovations Reserve Account one-fourth of any unreserved fund balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year.

(b) Use of Funds. — The funds in the Repairs and Renovations Reserve Account shall be used only for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund. Funds from the Repairs and Renovations Reserve Account shall be used only for the following types of projects:

(1) Roof repairs and replacements;
(2) Structural repairs;
(3) Repairs and renovations to meet federal and State standards;
(4) Repairs to electrical, plumbing, and heating, ventilating, and air-conditioning systems;
(5) Improvements to meet the requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., as amended;
(6) Improvements to meet fire safety needs;
(7) Improvements to existing facilities for energy efficiency;
(8) Improvements to remove asbestos, lead paint, and other contaminants, including the removal and replacement of underground storage tanks;
(9) Improvements and renovations to improve use of existing space;
(10) Historical restoration;
(11) Improvements to roads, walks, drives, utilities infrastructure; and
(12) Drainage and landscape improvements.

Funds from the Repairs and Renovations Reserve Account shall not be used for new construction or the expansion of the building area (sq. ft.) of an existing facility unless required in order to comply with federal or State codes or standards.

(c) Use of Funds. — Funds Available Only Upon Appropriation. — Funds reserved to the Repairs and Renovations Reserve Account shall be available for expenditure only upon an act of appropriation by the General Assembly. (2006-203, s. 3.)

§ 143C-4-4. (Effective July 1, 2007) Contingency and Emergency Fund.

(a) Creation. — The Contingency and Emergency Fund is established within the General Fund. The General Assembly shall appropriate a specific amount to this fund for contingencies and emergencies in the Current Operations Appropriations Act or other appropriations bill.

(b) Authorized Uses. — Notwithstanding any other provision of law, funds appropriated to the Contingency and Emergency Fund may be used only for expenditures required: (i) by a court or Industrial Commission order, (ii) to respond to events as authorized under G.S. 166A-5(1)a.9. of the Emergency Management Act, or (iii) for other statutorily authorized purposes or other contingencies and emergencies.

(c) Request for Allocation. — A State agency may request an allocation from the Contingency and Emergency Fund by submitting a request in writing to the Director along with any information required by the Director. If the Director approves the request, the Director shall present the request, together with a recommendation, to the Council of State for its approval. If the Council of State approves the request, the Director shall order the Controller to allocate the funds requested. The Director shall report on the request at the next scheduled meeting of the Joint Legislative Commission on Governmental Operations. (2006-203, s. 3.)

§ 143C-4-5. (Effective July 1, 2007) Non-State match restrictions.

Whenever money is required to match an appropriation made for a specific purpose by the State of North Carolina, the recipient of the appropriation shall actually receive as a gift, grant, earnings in actual money, or a pledge that can be used as collateral in any prudent loan transaction, the matching amount required. The recipient shall retain the matching amount received in its possession until spent for that purpose and shall spend an equal percentage of the appropriation and of the matching amount each time an expenditure is made, unless the individual appropriation requires otherwise. (2006-203, s. 3.)

§ 143C-4-6. (Effective July 1, 2007) General Fund operating budget size limited.

(a) Size Limitation. — Except as otherwise provided in this section, the General Fund operating budget each fiscal year shall not be greater than seven percent (7%) of the projected total State personal income for that fiscal year.

(b) Increase in Size Limitation. — To the extent that any percent increase in appropriations for a fiscal year for (i) Medicaid, (ii) operation of prisons, or (iii) the costs of providing health insurance for teachers and State employees, exceeds the percent increase in State personal income growth for the same period, the limitation on the size of the General Fund operating budget provided in subsection (a) of this section for that fiscal year shall be increased by the dollar amount represented by the excess percentage. For all subsequent fiscal years, the percent limitation contained in subsection (a) shall then be increased to reflect that dollar adjustment.

(c) Fiscal Reports. — The Office of State Budget and Management and the Fiscal Research Division of the General Assembly shall each submit a tentative estimate of total State personal income for the upcoming fiscal year to the General Assembly no later than February 1 of each year. The Office and the Fiscal Research Division shall each submit a final projection of total State personal income for the upcoming fiscal year to the General Assembly no later than May 1 of each year. The General Assembly shall use the lower of the two final projections to calculate the limitation on the size of the General Fund operating budget provided in this section. (2006-203, s. 3.)

§ 143C-4-7. (Effective July 1, 2007) Limit on number of permanent positions budgeted.

The total number of permanent budgeted positions established in State agencies shall not be increased by the end of any State fiscal year by a greater percentage rate of change than the percentage rate of change of the residential population growth for the State of North Carolina. The Office of State Budget and Management shall be responsible for computing the annual percentage rates of change for each measure. The population growth rate shall be computed by averaging the annual residential population growth rate in each of the preceding 10 fiscal years as stated in the annual estimates of residential population in North Carolina made by the United States Census Bureau. The growth rate of the number of budgeted positions shall be computed by averaging the annual rate of growth of State budgeted positions in each of the preceding 10 fiscal years. The total number of permanent budgeted positions established in State agencies shall be computed by adding the total number of budgeted Full-Time Equivalents from all fund types. This section does not apply to State-funded positions supported by the State in a local public school system or local community college institution. (2006-203, s. 3.)

ARTICLE 5.

Enactment of the Budget.

§ 143C-5-1. (Effective July 1, 2007) Rules for the introduction of the Governor's appropriations bills.

The Current Operations Appropriations Act recommended by the Governor and the Capital Improvements Appropriations Act recommended by the Governor shall be introduced by the chairs of the committee on appropriations in each house of the General Assembly. This section shall be considered and treated as a rule of procedure in the Senate and House of Representatives unless provided otherwise by a rule of either branch of the General Assembly. (2006-203, s. 3.)

§ 143C-5-2. (Effective July 1, 2007) Order of appropriations bills.

Each house of the General Assembly shall first pass its version of the Current Operations Appropriations Act on third reading and order it sent to the other chamber before placing any other appropriations bill on the calendar for second reading. This section does not apply to the following bills:

(1) An appropriations bill to respond to a disaster as defined by G.S. 166A-4(1).
(2) An appropriations bill making adjustments to the current year budget.
(3) An appropriations bill authorizing continued operations at current funding levels. (2006-203, s. 3.)

§ 143C-5-3. (Effective July 1, 2007) Availability statement required.

The Current Operations Appropriations Act enacted by the General Assembly shall state the General Fund, Highway Fund, and Highway Trust Fund availability used as basis for appropriations from those funds. (2006-203, s. 3.)

§ 143C-5-4. (Effective July 1, 2007) Enactment deadline.

The General Assembly shall enact the Current Operations Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered years in which a Current Operations Appropriations Act is enacted. (2006-203, s. 3.)

§ 143C-5-5. (Effective July 1, 2007) Committee report used to construe intent of budget acts.

A committee report incorporated by reference in the Current Operations Appropriations Act or the Capital Improvements Appropriations Act and distributed on the floor of the House of Representatives and of the Senate as part of the explanation of the act is to be construed with the appropriate act in interpreting its intent. If a report conflicts with the act, the act prevails. The Director of the Fiscal Research Division of the Legislative Services Commission shall send a copy of the reports to the Director. (2006-203, s. 3.)

ARTICLE 6.

Administration of the Budget.

Part 1. Certification and Administration of the Budget.

§ 143C-6-1. (Effective July 1, 2007) Budget enacted by the General Assembly; certified budgets of State agencies.

(a) Governor to Administer the Budget as Enacted by the General Assembly. — In accordance with Section 5(3) of Article III of the North Carolina Constitution, the Governor shall administer the budget as enacted by the General Assembly. All appropriations of State funds now or hereafter made to the State agencies and non-State entities authorize expenditures only for the (i) purposes or programs and (ii) objects or line items enumerated in the Recommended State Budget and the Budget Support Document recommended to the General Assembly by the Governor, as amended and enacted by the General Assembly in the Current Operations Appropriations Act, the Capital Improvements Appropriations Act, or any other act affecting the State budget. The Governor shall ensure that appropriations are expended in strict accordance with the budget enacted by the General Assembly.

(b) Departmental Receipts. — Departmental receipts collected to support a program or purpose shall be credited to the fund from which appropriations have been made to support that program or purpose.

(c) Certification of the Budget. — The Director of the Budget shall certify to each State agency the amount appropriated to it for each program and each object from all governmental and proprietary funds. The certified budget for each State agency shall reflect the total of all appropriations enacted for each State agency by the General Assembly in the Current Operations Appropriations Act, the Capital Improvements Appropriations Act, and any other act affecting the State budget. The certified budget for each State agency shall follow the format of the Budget Support Document as modified to reflect changes enacted by the General Assembly. (2006-203, s. 3.)

§ 143C-6-2. (Effective July 1, 2007) Methods to avoid deficit.

(a) Appropriations. — Each appropriation is maximum and conditional. The expenditures authorized by an appropriation from a fund shall be made only if necessary and only if the aggregate revenues to the fund during each fiscal year of the biennium, when added to any unreserved fund balance from the previous fiscal year, are sufficient to support the expenditures.

(b) Revenue Collections. — The Director, with the assistance of the Secretary of Revenue and other officials collecting or receiving appropriated State revenue, shall continuously survey the revenue collections. If the Director finds that revenues to any fund, when added to the beginning unreserved fund balance in that fund, will be insufficient to support appropriations from that fund, the Director shall immediately notify the General Assembly that a deficit is anticipated. The Director shall report in a timely manner to the General Assembly a plan containing the expenditure reductions and other lawful measures as the Director is implementing in order to avert the deficit.

(c) Local Governments Funds. — In exercising the powers contained in Section 5(3) of Article III of the North Carolina Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated to local governments unless the Governor has exhausted all other sources of revenue of the State including any appropriated surplus remaining in the treasury at the beginning of the fiscal period.

In accordance with Section 19 of Article I of the North Carolina Constitution and the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue. This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. (2006-203, s. 3.)

§ 143C-6-3. (Effective July 1, 2007) Allotments.

To receive the operating funds appropriated to it, a State agency shall submit to the Director, at intervals and in a format prescribed by the Director, a request for an allotment of the amount estimated to be required for the agency's operating costs during the ensuing fiscal period. The Director shall approve or modify the allotment requests, and the State Controller shall implement the allotments as approved or modified by the Director. (2006-203, s. 3.)

§ 143C-6-4. (Effective July 1, 2007) Budget Adjustments Authorized.

(a) Findings. — The General Assembly recognizes that even the most thorough budget deliberations may be affected by unforeseeable events. Under limited circumstances set forth in this section, the Director may adjust the enacted budget by making transfers among lines of expenditure, purposes, or programs or by increasing expenditures funded by departmental receipts. Under no circumstances, however, shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year.

(b) Adjustments to the Certified Budget. — Notwithstanding the provisions of G.S. 143C-6-1, a State agency may, with approval of the Director of the Budget, spend more than was authorized in the certified budget for all of the following:

(1) An object or line item within a purpose or program so long as the total amount expended for the purpose or program is no more than was authorized in the certified budget for the purpose or program.

(2) A purpose or program if the overexpenditure of the purpose or program is:
  a. Required by a court or Industrial Commission order;
  b. Authorized under G.S. 166A-5(1)a.9. of the Emergency Management Act; or
  c. Required to call out the national guard.

(3) A purpose or program not subject to the provisions of subdivision (b)(2) of this subsection, but only in accord with the following restrictions: (i) the overexpenditure is required to continue the purpose or programs due to complications or changes in circumstances that could not have been foreseen when the budget for the fiscal period was enacted, (ii) the scope of the purpose or program is not increased, (iii) the overexpenditure is authorized on a nonrecurring basis, and (iv) under no circumstances shall the total requirements for a State department exceed the department's certified budget for the fiscal year by more than three percent (3%) without prior consultation with the Joint Legislative Commission on Governmental Operations.

(c) Overexpenditures Reported. — The Director shall report quarterly, beginning October 31, to the Joint Legislative Commission on Governmental Operations on overexpenditures approved by the Director under subdivisions (2) and (3) of subsection (b) of this section.

(d) Overexpenditures in Senate Budget. — The President Pro Tempore of the Senate may approve expenditures for more than was authorized in the enacted budget for objects or line items in the budget of the Senate.

(e) Overexpenditures in House of Representatives Budget. — The Speaker of the House of Representatives may approve expenditures for more than was authorized in the enacted budget objects or line items in the budget of the House of Representatives.

(f) Transfers Between Line Items or Programs in General Assembly Budget Other Than Senate and House of Representatives. — Expenditures exceeding amounts authorized for programs, objects, or line items in the budget of the General Assembly other than those of the Senate and House of Representatives shall be approved jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(g) Transfers in The University of North Carolina Budget. — Transfers or changes within the budget of The University of North Carolina may be made as provided in Article 1 of Chapter 116 of the General Statutes. (2006-203, s. 3.)

§ 143C-6-5. (Effective July 1, 2007) No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation; no fee increases that the General Assembly has rejected.

(a) Notwithstanding any other provision of law, no funds from any source, except for gifts, grants, or funds allocated from the Repair and Renovations Account in accordance with G.S. 143C-4-3, funds allocated from the Contingency and Emergency Fund in accordance with G.S. 143C-4-4, and funds exempted from Chapter 143C in accordance with G.S. 143C-1-3(c) may be expended for any new or expanded purpose, position, or other expenditure for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period. For the purpose of this subsection, the General Assembly has considered a purpose, position, or other expenditure when that purpose is included in a bill which fails a reading, or if the purpose is included in the version of a bill that passes one house, but the bill is enacted without the purpose.

(b) Notwithstanding any other provision of law, no fee shall be increased if the General Assembly has rejected an increase of that fee for the current fiscal period. For the purpose of this subsection, the General Assembly has rejected a fee increase when that fee increase is included in a bill which fails a reading, or if the fee increase is included in the version of a bill that passes one house, but the bill is enacted without the fee increase. (2006-66, s. 6.4; 2006-203, s. 3.)

Editor's Note. — Session Laws 2006-66, s. 6.4, enacted G.S. 143-16.7, containing provisions similar to G.S. 143C-6-5(b). G.S. 143-16.7 is repealed effective July 1, 2007, but has been added to the historical citation for G.S. 143C-6-5 at the direction of the Revisor of Statutes.

CASE NOTES

***Editor's Note.** — The annotations under this section were decided under former G.S. 143-16.3.*

Construction. — G.S. 143-16.3 did not prohibit a state agency from committing the state to the expenditure of funds which had not been appropriated for the purpose of a contract, because the pertinent portion of G.S. 143-16.3 stated that no funds from any source could be expended for any new or expanded purpose, position or other expenditure for which the General Assembly had considered but not enacted an appropriation of funds for the current fiscal budget; thus, G.S. 143-16.3 only prohibited the actual expenditure of funds if not appropriated. N.C. Monroe Constr. Co. v. State, 155 N.C. App. 320, 574 S.E.2d 482, 2002 N.C. App. LEXIS 1612 (2002), cert. denied, cert. dismissed, 357 N.C. 165, 580 S.E.2d 370 (2003).

OPINIONS OF ATTORNEY GENERAL

State Treasurer. — Because the restrictions contained in this section primarily involve controls exercised by the General Assembly, the State Treasurer is subject thereto. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

§ 143C-6-6. (Effective July 1, 2007) Positions included in the State Payroll.

(a) Before a State agency establishes a new position or changes the funding of an existing position, the agency shall submit the proposed action to the Director for approval. The Director shall review the proposed action to ensure that funds for the action are included in the amount appropriated to the agency. If the Director approves the action, the Director shall notify the agency and the Controller of the approval. The Controller shall not honor a voucher in payment of a payroll that includes a new position or a change in an existing position that has not been approved by the Director.

(b) Payments on behalf of employees for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases, required employer salary-related contributions for retirement benefits, death benefits, the Disability Income Plan and social security for employees shall be paid from the General Fund or the Highway Fund, only to the extent of the proportionate part paid from the General Fund or Highway Fund, in support of the salary of the employee, and the remainder of the employer's contribution requirements shall be paid from the same source that supplies the remainder of the employee's salary.

(c) This section does not apply to The University of North Carolina. (2006-203, s. 3.)

OPINIONS OF ATTORNEY GENERAL

***Editor's Note.** — The annotations under this section were decided under former G.S. 143-34.1.*

Voluntary Indemnity Plan. — The statutes that govern the Teachers' and State Employees' Comprehensive Major Medical Plan and the Statewide Flexible Benefits Program permit the Statewide Flexible Benefits Program to offer a voluntary indemnity plan that provides hospital confinement, short-stay, rehabilitation unit, surgical, heart attack, stroke, coma, paralysis, ambulance, and wellness benefits. See opinion of Attorney General to Mr. Carl Goodwin, Director, Risk Control Services, Office of State Personnel, 2001 N.C. AG LEXIS 40 (10/3/01).

Cafeteria Plan. — The University of North Carolina, or some of its campuses, may not offer a cafeteria plan which allows pre-tax premiums for dependent health coverage as such competition would impair the object of the statute, which was to establish a single statewide plan that did not compete with existing benefits. See opinion of Attorney General to Leslie Winner, Vice President and General Counsel, University of North Carolina, 2002 N.C. AG LEXIS 15 (3/26/02).

§ 143C-6-7. (Effective July 1, 2007) Compliance with Chapter and appropriations acts by State agencies.

(a) Compliance With Chapter and Appropriations Acts. — Except as otherwise provided by law, all expenditures of State funds by a State agency shall be made in compliance with the State budget as enacted by the General Assembly and certified by the Director. If the Director finds that a State agency has spent or encumbered State funds for an unauthorized purpose, the Director shall take appropriate administrative action to ensure that no further irregularities occur and shall report to the Attorney General any facts that pertain to an apparent violation of a penal statute or an apparent instance of malfeasance, misfeasance, or nonfeasance by a person.

(b) Repayment of Funds Spent for an Unauthorized Purpose. — In addition to the provisions of subsection (a) of this section, if the Director finds that a State agency violated this section, the Director shall withhold any future allocations for the unauthorized purpose and shall also withhold future allocations to the Department in an amount equal to the funds unlawfully spent. (2006-203, s. 3.)

§ 143C-6-8. (Effective July 1, 2007) State agencies may incur financial obligations only if authorized by the Director of the Budget and subject to the availability of appropriated funds.

Unless otherwise authorized by the Director as provided by law, purchase orders, contracts, salary commitments, and any other financial obligations by State agencies shall be subject to the availability of appropriated funds or available funds that are not State funds as defined in this Chapter. (2006-203, s. 3.)

§ 143C-6-9. (Effective July 1, 2007) Use of lapsed salary savings.

Lapsed salary savings may be expended only for nonrecurring purposes or line items. (2006-203, s. 3.)

§ 143C-6-10: Reserved for future codification purposes.

Part 2. Highway Appropriations.

§ 143C-6-11. (Effective July 1, 2007) Highway appropriation.

(a) General Provisions. — Appropriations made for transportation projects are subject to the provisions in this section. If the provisions in this section conflict with the budget acts, the budget acts prevail.

(b) Cash Flow Management of Transportation Projects. — Transportation Project funds shall be budgeted, expended, and accounted for on a 'cash flow' basis. Pursuant to this end, transportation project contracts shall be planned and limited so payments due at any time will not exceed the cash available to pay them.

(c) Appropriations Are for Payments and Contract Commitments to Be Made in the Appropriation Fiscal Year. — The appropriations for transportation projects are for maximum payments estimated to be made during the appropriation fiscal year and for maximum contracting authority for future years. Transportation project contracts shall be scheduled so that the total contract payments and other expenditures charged to projects in the fiscal year for each transportation project appropriation item will not exceed the current appropriations provided by the General Assembly and unspent prior appropriations made by the General Assembly for the particular appropriation item.

(d) Payments Subject to Availability of Funds. — The annual appropriations for transportation projects shall be expended only to the extent that sufficient funds are available in the Highway Fund.

(e) Retainage Fully Funded. — The Department of Transportation shall fully fund retainage from transportation project contracts in the year in which the work is performed.

(f) Five Percent (5%) of the Cash Balance Required. — The Department of Transportation shall maintain an available cash balance at the end of each month equal to at least five percent (5%) of the unpaid balance of the total transportation project contract obligations. In the event this cash position is not maintained, no further transportation project contract commitments may be entered into until the cash balance has been regained. For the purposes of awarding contracts involving federal aid, any amount due from the federal government and the Highway Bond Fund as a result of unreimbursed expenditures may be considered as cash for the purposes of this provision.

(g) Anticipation of Revenues. — In awarding State transportation project contracts requiring payments beyond a biennium, the Director may anticipate revenues as authorized and certified by the General Assembly to continue contract payments for up to seventy-five percent (75%) of the revenues which are estimated for the first fiscal year of the succeeding biennium and which are not required for other budget items. Up to fifty percent (50%) of the revenues not required for other budget items may be anticipated for the second and subsequent fiscal years' contract payments. Up to forty percent (40%) of the revenues not required for other budget items may be anticipated for the first year of the second succeeding biennium and up to twenty percent (20%) of the revenues not required for other budget items may be anticipated for the second year of the second succeeding biennium.

(h) Amounts Encumbered. — Transportation project appropriations may be encumbered in the amount of allotments made to the Department of Transportation by the Director for the estimated payments for transportation project contract work to be performed in the appropriation fiscal year. The allotments shall be multiyear allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in subsection (c) above. Payment for transportation project work performed pursuant to contract in any fiscal year other than the current fiscal year is subject to appropriations by the General Assembly. Transportation project contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any transportation project contract, and any transportation project contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

(i) Provision Incorporated in Contracts. — The provisions of subsection (h) of this section shall be incorporated verbatim in all transportation project contracts.

(j) Existing Contracts Are Not Affected. — The provisions of this section shall not apply to transportation project contracts awarded by the Department of Transportation prior to July 15, 1980.

(k) The Department of Transportation shall do all of the following:

(1) Utilize cash flow financing to the extent possible to fund transportation projects with the goal of reducing the combined average daily cash balance of the Highway Fund and the Highway Trust Fund to an amount equal to the twelve percent (12%) of the combined estimate of the yearly receipts of the Funds. The target amount shall include an amount necessary to make all municipal-aid funding requirements of the Department.

(2) Establish necessary management controls to facilitate use of cash flow financing, such as establishment of a financial planning committee, development of a monthly financing report, establishment of appropriate fund cash level targets, review of revenue forecasting procedures, and reduction of accrued unbilled costs.

(3) Report annually, on October 1 of each year, to the Joint Legislative Transportation Oversight Committee on its cash management policies and results. (2006-203, s. 3.)

CASE NOTES

Editor's Note. *— The annotations under this section were decided under former G.S. 143-28.1.*

Constitutionality. — This section does not violate N.C. Const., Art. V, § 3. Boneno v. State, 54 N.C. App. 690, 284 S.E.2d 170 (1981).

Authorization by this section of Department of Transportation construction and maintenance contracts using "cash flow" financing does not violate the prohibition of N.C. Const., Art. III, § 5(3) against incurring a deficit; only actual expenditures in excess of receipts would violate the provision. Boneno v. State, 54 N.C. App. 690, 284 S.E.2d 170 (1981).

§§ 143C-6-12 through 143C-6-20: Reserved for future codification purposes.

Part 3. Non-State Entities Receiving State Funds.

§ 143C-6-21. (Effective July 1, 2007) Payments to nonprofits.

Except as otherwise provided by law, an annual appropriation of one hundred thousand dollars ($100,000) or less to or for the use of a nonprofit corporation shall be made in a single annual payment. An annual appropriation of more than one hundred thousand dollars ($100,000) to or for the use of a nonprofit corporation shall be made in quarterly or monthly payments, in the discretion of the Director of the Budget. (2006-203, s. 3.)

Editor's Note. — Session Laws 2006-203, s. 3, enacted this section as G.S. 143C-6-12. It has been renumbered at the direction of the Revisor of Statutes.

§ 143C-6-22. (Effective July 1, 2007) Use of State funds by non-State entities.

(a) Disbursement and Use of State Funds. — Every non-State entity that receives, uses, or expends any State funds shall use or expend the funds only for the purposes for which they were appropriated by the General Assembly. State funds include federal funds that flow through the State Treasury.

(b) Compliance by Non-State Entities. — If the Director of the Budget finds that a non-State entity has spent or encumbered State funds for an unauthorized purpose, or fails to submit or falsifies the information required by G.S. 143C-6-23 or any other provision of law, the Director shall take appropriate administrative action to ensure that no further irregularities or violations of law occur and shall report to the Attorney General any facts that pertain to an apparent violation of a criminal law or an apparent instance of malfeasance, misfeasance, or nonfeasance in connection with the use of State funds. Appropriate administrative action may include suspending or withholding the disbursement of State funds and recovering State funds previously disbursed.

(c) Civil Actions. — Civil actions to recover State funds or to obtain other mandatory orders in the name of the State on relation of the Attorney General, or in the name of the Office of State Budget and Management, shall be filed in the General Court of Justice in Wake County. (2006-203, s. 3.)

Editor's Note. — Session Laws 2006-203, s. 3, enacted this section as G.S. 143C-6-13. It has been renumbered at the direction of the Revisor of Statutes.

§ 143C-6-23. (Effective July 1, 2007) State grant funds: administration; oversight and reporting requirements.

(a) Definitions. — The following definitions apply in this section:

(1) "Grant" and "grant funds" means State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.

(2) "Grantee" means a non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(3) "Subgrantee" means a non-State entity that receives State funds as a grant from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(b) Conflict of Interest Policy. — Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

(c) No Overdue Tax Debts. — Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.

(d) Office of State Budget Rules Must Require Uniform Administration of State Grants. — The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by this subsection. The rules shall establish policies and procedures for disbursements of State grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. The policies and procedures shall:

(1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.

(2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.

(3) Ensure that State funds are spent in accordance with the purposes for which they were granted.

(4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of grant funds.

(5) Provide for adequate oversight and monitoring to prevent the misuse of grant funds.

(6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial and program performance information. The mandatory periodic reporting requirements shall require grantees and subgrantees to file with the State Auditor copies of reports and statements that are filed with State agencies pursuant to this subsection. Compliance with the mandatory periodic reporting requirements of this subdivision shall not require grantees and subgrantees to file with the State Auditor the information described in subsections (b) and (c) of this section.

(7) Require grantees and subgrantees to maintain reports, records, and other information to properly account for the expenditure of all grant funds and to make such reports, records, and other information available to the grantor State agency for oversight, monitoring, and evaluation purposes.

(8) Require grantees and subgrantees to ensure that work papers in the possession of their auditors are available to the State Auditor for the purposes set out in subsection (i) of this section.

(9) Require grantees to be responsible for managing and monitoring each project, program, or activity supported by grant funds and each subgrantee project, program, or activity supported by grant funds.

(10) Provide procedures for the suspension of further disbursements or use of grant funds for noncompliance with these rules or other inappropriate use of the funds.

(11) Provide procedures for use in appropriate circumstances for reinstatement of disbursements that have been suspended for noncompliance with these rules or other inappropriate use of grant funds.

(12) Provide procedures for the recovery and return to the grantor State agency of unexpended grant funds from a grantee or subgrantee if the grantee or subgrantee is unable to fulfill the purposes of the grant.

(e) Rules Are Subject to the Administrative Procedure Act. — Notwithstanding the provisions of G.S. 150B-2(8a)b. rules adopted pursuant to subsection (d) of this section are subject to the provisions of Chapter 150B of the General Statutes.

(f) Suspension and Recovery of Funds to Grant Recipients for Noncompliance. — The Office of State Budget and Management, after consultation with the administering State agency, shall have the power to suspend disbursement of grant funds to grantees or subgrantees, to prevent further use of grant funds already disbursed, and to recover grant funds already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this section. If the grant funds are a pass-through of funds granted by an agency of the United States, then the Office of State Budget and Management must consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking the actions authorized by this subsection.

(g) Audit Oversight. — The State Auditor has audit oversight, with respect to grant funds received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee or subgrantee that receives, uses, or expends grant funds. A grantee or subgrantee must, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of grant funds received by the grantee or subgrantee. The grantee or subgrantee must furnish any additional financial or budgetary information requested by the State Auditor, including audit work papers in the possession of any auditor of a grantee or subgrantee directly related to the use and expenditure of grant funds.

(h) Report on Grant Recipients That Failed to Comply. — Not later than May 1, 2007, and by May 1 of every succeeding year, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on all grantees or subgrantees that failed to comply with this section with respect to grant funds received in the prior fiscal year.

(i) State Agencies to Submit Grant List to Auditor. — No later than October 1 of each year, each State agency shall submit a list to the State Auditor, in the format prescribed by the State Auditor, of every grantee to which the agency disbursed grant funds in the prior fiscal year. The list shall include the amount disbursed to each grantee and other information as required by the State Auditor to comply with the requirements of this section. (2006-203, s. 3.)

Editor's Note. — Session Laws 2006-203, s. 3, enacted this section as G.S. 143C-6-14. It has been renumbered at the direction of the Revisor of Statutes.

ARTICLE 7.

Federal and Other Receipts.

§ 143C-7-1. (Effective July 1, 2007) Funds creating an obligation.

(a) Report to Director. — A State agency that submits to the federal government or to any other party an application for funds that will be subject to this Chapter shall first provide to the Director a copy of the application along with any related information the Director may require.

(b) Contract Provision. — A State agency that receives funds pursuant to an application that must be reported to the Director under subsection (a) of this section shall include in any related contract or other grant instrument a clause specifically stating that the expenditure of money deposited in the State treasury is subject to acts of appropriation by the General Assembly. (2006-203, s. 3.)

§ 143C-7-2. (Effective July 1, 2007) Federal Block Grants.

(a) Plans Submitted and Reviewed. — The Secretary of each State agency that receives and administers federal Block Grant funds shall prepare and submit the agency's Block Grant plans to the Director of the Budget. The Director of the Budget shall submit the Block Grant plans to the Fiscal Research Division of the General Assembly not later than February 28 of each odd-numbered calendar year and not later than April 30 of each even-numbered calendar year.

(b) Information To Be Included in Plans. — Each State agency shall submit a separate Block Grant plan for each Block Grant received and administered by the agency, and each plan shall include all of the following:

(1) A delineation of the proposed dollar amount by activity and by category, including dollar amounts to be used for administrative costs.

(2) A comparison of the proposed funding with two prior years' program budgets. (2006-203, s. 3.)

ARTICLE 8.

Budgeting Capital Improvement Projects.

§ 143C-8-1. (Effective July 1, 2007) Legislative intent; purpose.

(a) Legislative Intent. — The General Assembly recognizes the need to establish a comprehensive process for capital improvement planning and budgeting that is fully integrated with State financial planning and debt management.

(b) Capital Improvement Planning and Budgeting Process. — The capital improvement planning and budgeting process shall include the following elements:

(1) An inventory of facilities owned by State agencies.

(2) Criteria used to evaluate capital improvement needs.

(3) A six-year capital improvement needs estimate.

(4) A six-year capital improvements plan.

(5) Recommendations for capital improvements set forth in the Recommended State Budget as specified in G.S. 143C-3-5.

(c) Office of State Budget and Management to Manage Planning Process. — The Office of State Budget and Management has responsibility for management of the capital improvement planning process. The Director of the Budget may assign to any State agency or institution such duties and responsibilities as may, in the Director's judgment, be necessary to the successful administration of the capital improvement planning process. (1997-443, s. 34.9; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 3.)

§ 143C-8-2. (Effective July 1, 2007) Capital facilities inventory.

The Department of Administration shall develop and maintain an automated inventory of all facilities owned by State agencies pursuant to G.S. 143-341(4). The inventory shall include the location, occupying agency, ownership, size, description, condition assessment, maintenance record, parking and employee facilities, and other information to determine maintenance needs and prepare life-cycle cost evaluations of each facility listed in the inventory. The Department of Administration shall update and publish the inventory at least once every three years. The Department shall also record in the inventory acquisitions of new facilities and significant changes in existing facilities as they occur. (1997-443, s. 34.9; 2006-203, s. 3.)

§ 143C-8-3. (Effective July 1, 2007) Capital improvement needs criteria.

The Office of State Budget and Management shall develop a weighted list of factors that may be used to evaluate the need for capital improvement projects. The list shall include all of the following:

(1) Preservation, adequacy and use of existing facilities.
(2) Health and safety considerations.
(3) Operational efficiencies.
(4) Projected demand for governmental services. (1997-443, s. 34.9; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 3.)

§ 143C-8-4. (Effective July 1, 2007) Agency capital improvement needs estimates.

(a) Needs Estimate Required. — On or before September 1 of each even-numbered year, each State agency shall submit to the Office of State Budget and Management and to the Division of Fiscal Research a six-year capital improvement needs estimate. This estimate shall describe the agency's anticipated capital needs for each year of the six-year planning period. Capital improvement needs estimates shall be shown in two parts.

(b) Repairs and Renovations Needs Estimate. — The first part of the capital improvement needs estimates shall include only requirements for repairs and renovations necessary to maintain the existing use of existing facilities. Each proposed repair and renovation expenditure shall be justified by reference to the Facilities Condition Assessment Program operated by the Office of State Construction.

(c) Real Property and New Construction or Facility Rehabilitation Needs Estimate. — The second part of the capital improvement needs estimates shall include only proposals for real property acquisition and projects involving construction of new facilities or rehabilitation of existing facilities to accommodate uses for which the existing facilities were not originally designed. Each project included in this part shall be justified by reference to the needs evaluation criteria established by the Office of State Budget and Management pursuant to G.S. 143C-8-3.

For capital projects of The University of North Carolina and its constituent institutions, the Office of State Budget and Management shall utilize the needs evaluation information approved by the Board of Governors of The University of North Carolina developed pursuant to G.S. 116-11(9). (1997-443, s. 34.9; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 3.)

§ 143C-8-5. (Effective July 1, 2007) Six-year capital improvements plan.

(a) General. — The State capital improvement plan shall address the long-term capital improvement needs of all State government agencies and shall incorporate all capital projects, however financed, proposed to meet those needs, except that transportation infrastructure projects shall be excluded. On or before December 31 of each even-numbered year, the Director of the Budget shall prepare and transmit to the General Assembly a six-year capital improvement plan. When preparing the plan, the Director of the Budget shall consider the capital improvement needs estimates submitted by State agencies as required in G.S. 143C-8-4. The plan shall be prepared in two parts.

(b) Repair and Renovations Requirements. — The first part of the capital improvement plan shall set forth repair and renovations requirements that, in the judgment of the Director of the Budget, should be met within each year of the six-year planning period to protect and preserve existing capital improvement facilities. The plan shall identify individual projects in priority order by State agency and shall specify the means of financing.

(c) Real Property Acquisition, New Construction, or Facility Rehabilitations. — The second part of the capital improvement plan shall set forth an integrated schedule for real property acquisition, new construction, or rehabilitation of existing facilities that, in the judgment of the Director of the Budget, should be initiated within each year of the six-year planning period. The plan shall contain for each project (i) estimates of real property acquisition, and construction or rehabilitation costs (ii) a means of financing the project, and (iii) an estimated schedule for the completion of the project. Where the means of financing would involve direct or indirect debt service obligations, a schedule of those obligations shall be presented. (1997-443, s. 34.9; 2006-203, s. 3.)

§ 143C-8-6. (Effective July 1, 2007) Recommendations for capital improvements set forth in the Recommended State Budget.

(a) Budget Director's Recommendations. — The Director of the Budget shall recommend expenditures for repairs and renovations of existing facilities, and real property acquisition, new construction, or rehabilitation of existing facilities in the Recommended State Budget in accordance with G.S. 143C-3-5.

(b) Repairs and Renovations in the Recommended State Budget. — The Recommended State Budget shall contain for repairs and renovations of existing facilities: (i) the amount recommended for each State agency, (ii) a summary of the recommendations by project type, and (iii) the means of financing.

(c) Repairs and Renovations in the Budget Support Document. — The Budget Support Document shall contain for each repair and renovation project recommended in accordance with 143C-8-6(b): (i) a project description and justification, (ii) a detailed cost estimate, (iii) an estimated schedule of cash flow requirements over the life of the project, (iv) an estimated schedule for the completion of the project, and (v) an explanation of the means of financing.

(d) Other Capital Projects in the Recommended State Budget. — The Recommended State Budget shall contain for each capital project involving real property acquisition, new construction, building area (sq. ft.) expansions, or the rehabilitation of existing facilities to accommodate new or expanded uses: (i) a project description and statement of need, (ii) an estimate of acquisition and construction or rehabilitation costs, and (iii) a means of financing the project.

(e) Other Capital Projects in the Budget Support Document. — The Budget Support Document shall contain for each capital project recommended in accordance with 143C-8-6(c): (i) a detailed project description and justification, (ii) a detailed estimate of acquisition, planning, design, site development, construction, contingency and other related costs, (iii) an estimated schedule of cash flow requirements over the life of the project, (iv) an estimated schedule for the completion of the project, (v) an estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation, (vi) an estimate of revenues, if any, likely to be derived from the project, covering the first five years of operation, and (vii) an explanation of the means of financing. (2006-203, s. 3.)

§ 143C-8-7. (Effective July 1, 2007) When a State agency may begin a capital improvement project.

No State agency may expend funds for the construction or renovation of any capital improvement project except as needed to comply with this Article or otherwise authorized by the General Assembly. Funds that become available by gifts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly, or any other funds available to a State agency or institution may be utilized for advanced planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget. (2006-203, s. 3.)

§ 143C-8-8. (Effective July 1, 2007) When a State agency may increase the cost of a capital improvement project.

Upon the request of the administration of a State agency, the Director of the Budget may, when in the Director's opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution. (2006-203, s. 3.)

§ 143C-8-9. (Effective July 1, 2007) When a State agency may change the scope of a capital improvement project.

A State agency may increase the scope of a capital improvement project only if the General Assembly authorizes the increase. A State agency may decrease the scope of a capital improvement project if the Director authorizes the decrease. To obtain the Director's authorization for a decrease in the scope of a capital improvement project, a State agency shall submit its request to the Director in writing and shall state the reason for the request. (2006-203, s. 3.)

§ 143C-8-10. (Effective July 1, 2007) Project Reserve Account.

(a) Project Reserve Account. — The Project Reserve Account is created as a reserve account within the Capital Project Fund. When a construction contract is entered for a capital improvement project for which the General Assembly has enacted an appropriation, the appropriation is encumbered for the project's costs of real property acquisition, planning, design, site development, construction, contingencies, and other related costs. If the amount appropriated for the project exceeds the amount encumbered, the excess shall be credited to the Project Reserve Account, unless otherwise required by law. The Director may authorize funds in the Account to be used for any of the following:

(1) An emergency repair and renovation project at a State facility.

(2) The award of a project contract when bids for the contract exceed the amount appropriated for it if the project was designed within the scope intended by the appropriation and if the Director finds that all means to award the contract within the appropriation were reasonably attempted.

(3) A reversion to the principal fund from which revenue was appropriated for a project when the amount encumbered for the project is less than the amount appropriated.

(b) Reporting Requirement. — Whenever the Director authorizes the use of funds from the Project Reserve Account, the Director shall report the action to the Joint Legislative Commission on Governmental Operations at its next meeting. (2006-203, s. 3.)

§ 143C-8-11. (Effective July 1, 2007) Reversion of appropriation and lapse of project authorization.

(a) Reversion of Appropriation. — A State agency shall begin the planning of or the construction of an authorized capital improvement project during the fiscal year in which the funds are appropriated. If it does not, the Director may credit the appropriation to the Project Reserve Account, unless otherwise required by law. If the Director does not credit the appropriation to the Project Reserve Account, the appropriation shall revert to the principal fund from which it was appropriated. The Director may, for good cause, allow a State agency to take up to an additional 12 months to take the actions required by this subsection.

(b) Lapse of Project Authorization. — Authorizations for capital improvement projects shall lapse if any of the following occur: (i) the appropriation for a capital improvement project reverts, (ii) the construction of a project does not begin during the first two fiscal years in which funds are appropriated, or (iii) the Director redirects funds appropriated for a capital improvement project in accordance with G.S. 143C-6-2. The Director may, for good cause, allow a State agency to take up to an additional 12 months to begin construction of a project; however, if the Director approves an extension of time under this subsection and construction of the project has not begun by the end of the extension, the authorization for the project shall lapse. (2006-203, s. 3.)

§ 143C-8-12. (Effective July 1, 2007) University system capital improvement projects from sources that are not General Fund sources: approval of new project or change in scope of existing project.

Notwithstanding any other provision of this Chapter, the Director of the Budget may, upon request of the Board of Governors of The University of North Carolina and after consultation with the Joint Legislative Commission on Governmental Operations, approve: (i) expenditures to plan a capital improvement project of The University of North Carolina the planning for which is to be funded entirely with non-General Fund money, (ii) expenditures for a capital improvement project of The University of North Carolina that is to be funded entirely with non-General Fund money, or (iii) a change in the scope of any previously approved capital improvement project of The University of North Carolina provided that both the project and change in scope are funded entirely with non-General Fund money. (2006-203, s. 3.)

ARTICLE 9.

Special Funds and Fee Reports.

§ 143C-9-1. (Effective July 1, 2007) Medicaid Special Fund; transfers to Department of Health and Human Services.

(a) Political subdivisions may appropriate funds directly to the Department of Health and Human Services for Medicaid programs. Other public agencies and private sources may transfer funds to the Department for Medicaid programs. The Department may accept unconditional and unrestricted donations of such funds. Notwithstanding the provisions of this Article which might forbid such transfer or donation, the University of North Carolina Hospitals at Chapel Hill may transfer funds as provided by the previous sentence of this section.

(b) Contributed funds shall be subject to the Department of Health and Human Services administrative control and shall be allocated only as specifically provided in the Current Operations Appropriations Act, except such contributions shall not reduce State general revenue funding. At the end of any fiscal year, the unobligated balance of any such funds shall not revert to the General Fund, but shall be reappropriated for these purposes in the next fiscal year. (2006-203, s. 3.)

§ 143C-9-2. (Effective July 1, 2007) Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs.

(a) The Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs is established as an interest-bearing, nonreverting special trust fund in the Office of State Budget and Management. Moneys in the Trust Fund shall be held in trust and used solely to meet the mental health, developmental disabilities, and substance abuse services needs of the State. The Trust Fund shall be used to supplement and not to supplant or replace existing State and local funding available to meet the mental health, developmental disabilities, and substance abuse services needs of the State.

The State Treasurer shall hold the Trust Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Trust Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Trust Fund shall become part of the Trust Fund. Any balance remaining in the Trust Fund at the end of any fiscal year shall be carried forward in the Trust Fund for the next succeeding fiscal year.

Moneys in the Trust Fund shall be expended only in accordance with subsection (b) of this section and in accordance with limitations and directions enacted by the General Assembly.

(b) Moneys in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs shall be used only to:

(1) Provide start-up funds and operating support for programs and services that provide more appropriate and cost-effective community treatment alternatives for individuals currently residing in the

State's mental health, developmental disabilities, and substance abuse services institutions.

(2) Facilitate the State's compliance with the United States Supreme Court decision in Olmstead v. L.C. and E.W.

(3) Facilitate reform of the mental health, developmental disabilities, and substance abuse services system and expand and enhance treatment and prevention services in these program areas to remove waiting lists and provide appropriate and safe services for clients.

(4) Provide bridge funding to maintain appropriate client services during transitional periods as a result of facility closings, including departmental restructuring of services.

(5) Construct, repair, and renovate State mental health, developmental disabilities, and substance abuse services facilities.

(c) Notwithstanding G.S. 143C-1-2, any nonrecurring savings in State appropriations realized from the closure of any State psychiatric hospitals that are in excess of the cost of operating and maintaining a new State psychiatric hospital shall not revert to the General Fund but shall be placed in the Trust Fund and shall be used for the purposes authorized in this section. Notwithstanding G.S. 143C-1-2, recurring savings realized from the closure of any State psychiatric hospitals shall not revert to the General Fund but shall be credited to the Department of Health and Human Services to be used only for the purposes of subsections (b)(2) and (b)(3) of this section. (2006-203, s. 3.)

§ 143C-9-3. (Effective July 1, 2007) Settlement Reserve Fund.

(a) The "Settlement Reserve Fund" is established as a restricted reserve in the General Fund. Except as otherwise provided in this section, funds shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) A Health Trust Account is established in the Settlement Reserve Fund. The portion of each Master Settlement Agreement payment identified in Section 6(3) of S.L. 1999-2 shall be credited to the Health Trust Account. The State Controller shall transfer all funds in the Health Trust Account to the Health and Wellness Trust Fund created in Article 6C of Chapter 147 of the General Statutes.

(c) A Tobacco Trust Account is established in the Settlement Reserve Fund. The portion of each Master Settlement Agreement payment identified in Section 6(2) of S.L. 1999-2 shall be credited to the Tobacco Trust Account. The State Controller shall transfer all funds in the Tobacco Trust Account to the Tobacco Trust Fund created in Article 75 of Chapter 143 of the General Statutes.

(d) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement or final order or judgment of the court, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement, or a final order or judgment of a court in litigation between tobacco companies and the states, shall be credited to the Settlement Reserve Fund. (2006-203, s. 3.)

§ 143C-9-4. (Effective July 1, 2007) Annual Fee Report.

The Office of State Budget and Management shall prepare a report annually on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year. The report shall include the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year. (2006-203, s. 3.)

§ 143C-9-5. (Effective July 1, 2007) Assignment to the State of rights to tobacco manufacturer escrow funds.

A tobacco product manufacturer that elects to place funds into escrow pursuant to G.S. 66-291(a)(2) may make an assignment of its interest in the funds to the benefit of the State. The assignment applies to all funds, and any earnings and appreciation, that are in the escrow account at the time of the assignment or are subsequently deposited into the escrow account and are not released under the provisions of subdivision (1) or (2) of G.S. 66-291(b) at any time on or before the expiration of 10 years from the date of assignment. The assignment is irrevocable and shall include any reversionary interest in the escrow account and the funds therein that would otherwise belong to the tobacco manufacturer, including the right to receive the escrowed funds pursuant to G.S. 66-291(b)(3).

An assignment of rights executed pursuant to this section shall be in writing and shall be signed by a duly authorized representative of the tobacco product manufacturer making the assignment. An assignment is effective upon delivery to the Attorney General and the financial institution where the escrow account is maintained. (2006-66, s. 6.19(d); 2006-221, s. 3A; 2006-259, ss. 40(d), 40.5.)

Editor's Note. — Session Laws 2006-66, s. 6.19(d) as added by Session Laws 2006-221, s. 3A, makes this section effective July 1, 2007.

This section was enacted as G.S. 143C-9-3A by Session Laws 2006-66, s. 6.19(d), as added by Session Laws 2006-221, s. 3A. It was recodified as G.S. 143C-9-5 by Session Laws 2006-259, s. 40.5, effective August 23, 2006.

Session Laws 2006-259, s. 40(d) was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 6.19(e), as added by Session Laws 2006-221, s. 3A, provides: "If a final judgment by a court of competent jurisdiction declares that G.S. 143C-9-3A [G.S. 143C-9-5], as enacted by subsection (d) of this section, is invalid or unenforceable, then the statute is repealed, and any assignment made under it is void. If, as a result of a final judgment, it is determined that G.S. 143C-9-3A [G.S. 143C-9-5] as enacted by subsection (b) of this section, would subject payments to this State by participating manufacturers under the Master Settlement Agreement, as defined in G.S. 66-290, to a Non-Participating Manufacturer Adjustment under Section IX of that Agreement, then G.S. 143C-9-3A [G.S. 143C-9-5] is repealed, and any assignment made under it is void."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 143C-9-6. (Effective July 1, 2007) JDIG Reserve Fund.

(a) The State Controller shall establish a reserve in the General Fund to be known as the JDIG Reserve. Funds from the JDIG Reserve shall not be expended or transferred except in accordance with G.S. 143B-437.63.

(b) It is the intent of the General Assembly to appropriate funds annually to the JDIG Reserve established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year of the Job Development

Investment Grant Program established pursuant to G.S. 143B-437.52. (2006-66, s. 6.19(f); 2006-221, s. 3A; 2006-259, ss. 40(f), 40.5.)

Editor's Note. — Session Laws 2006-221, s. 3A, made this section effective July 1, 2007.

This section was enacted as G.S. 143C-3B by Session Laws 2006-66, s. 6.19(f), as added by S.L. 2006-221, s. 3A. It was recodified as G.S. 143C-9-6 by Session Laws 2006-259, s. 40.5, effective August 23, 2006.

Session Laws 2006-259, s. 40(f) was repealed, pursuant to the terms of Session Laws 2006-259, s. 40(i), upon Session Laws 2006-221 becoming law.

Article 10.

Penalties.

§ 143C-10-1. (Effective July 1, 2007) Offenses for violation of Chapter.

(a) Class 1 misdemeanor. — It is a Class 1 misdemeanor for a person to knowingly and willfully do any one or more of the following:

(1) Withdraw funds from the State treasury for any purpose not authorized by an act of appropriation.

(2) Approve any fraudulent, erroneous, or otherwise invalid claim or bill to be paid from an appropriation.

(3) Make a written statement, give a certificate, issue a report, or utter a document required by this Chapter, any portion of which is false.

(4) Fail or refuse to perform a duty imposed by this Chapter.

(b) Class A1 misdemeanor. — It is a Class A1 misdemeanor for a person to make a false statement in violation of G.S. 143C-6-23(c).

(c) Forfeiture of Office or Employment. — An appointed officer or employee of the State or an officer or employee of a political subdivision of the State, whether elected or appointed, forfeits his office or employment upon conviction of an offense under this section. An elected officer of the State is subject to impeachment for committing any of the offenses specified in this section. (2006-203, s. 3.)

§ 143C-10-2. (Effective July 1, 2007) Civil liability for violation of Chapter.

A person convicted of an offense under G.S. 143C-10-1 is liable in a civil action for any damages suffered by the State in consequence of the offense. (2006-203, s. 3.)

§ 143C-10-3. (Effective July 1, 2007) Suspension from office or impeachment for refusal to comply with Chapter.

(a) State Officer or Employee. — The Governor may suspend from the performance of his or her duties any State officer or employee, except an officer elected by the people, who persists, after notice and warning, in failing or refusing to comply with the provisions of this Chapter or any lawful administrative directive issued pursuant to this Chapter. Before acting to suspend, the Governor shall give the accused notice and an opportunity to be heard in his or her own defense. The Governor shall report the facts leading to suspension to the Attorney General who may initiate appropriate criminal or civil proceedings. The Governor may apply to the General Court of Justice for a restraining order and injunction if a suspended officer or employee persists in performing official acts.

(b) Elected Officers. — A State officer elected by the people who knowingly and willfully fails or refuses to comply with any provision of this Chapter or any lawful administrative directive issued under this Chapter is subject to impeachment. (2006-203, s. 3.)

Chapter 145.

State Symbols and Other Official Adoptions.

Sec.
145-23. State birthplace of traditional pottery.

§ 145-23. State birthplace of traditional pottery.

The Seagrove area, including portions of Randolph, Chatham, Lee, Moore, and Montgomery Counties, is designated as the official location of the birthplace of North Carolina traditional pottery. (2005-78, s. 1; 2006-264, s. 70.)

Effect of Amendments. — Session Laws 2006-264, s. 70, effective August 27, 2006, inserted "Lee."

Chapter 146.

State Lands.

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 6.

Acquisitions.

Sec.
146-22.3. Acquisition of land to be used to restore, enhance, preserve, or create wetlands.
146-22.4. Acquisition of wetlands from private mitigation banking companies.
146-22.5. Reimbursement of payment in lieu of future ad valorem taxes.

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 6.

Acquisitions.

§ 146-22.3. Acquisition of land to be used to restore, enhance, preserve, or create wetlands.

(a) Payment. — A State agency that acquires land by purchase for the purpose of restoring, enhancing, preserving, or creating wetlands as required by a permit or an authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 must pay to the county in which the land is located, as reimbursement, a sum equal to the estimated amount of ad valorem taxes that would have accrued to the county for the next 20 years had the land not been acquired by the State agency.

(b) Exception. — This section does not apply when the land purchased by the State agency and the wetlands permitted to be lost are located in the same county. In other circumstances, the governing body of the county and the State agency may enter into a written agreement to waive payment.

(c) Amount. — The estimated amount of ad valorem taxes that would have accrued for the next 20 years is the total assessed value of the acquired land excluded from the county's tax base multiplied by the tax rate set by the county board of commissioners in its most recent budget ordinance adopted under Chapter 159 of the General Statutes, and then multiplied by 20.

(d) Application. — This section applies only to land acquired in counties designated as a development tier one area under G.S. 143B-437.08. (2004-188, s. 4; 2006-252, s. 2.14.)

Effect of Amendments. — Session Laws 2006-252, s. 2.14, effective January 1, 2007, substituted "a development tier one area under G.S. 143B-437.08" for "an enterprise tier one or enterprise tier two area under G.S. 105-129.3" in subsection (d).

§ 146-22.4. Acquisition of wetlands from private mitigation banking companies.

(a) Payment for Taxes. — A State agency that acquires wetlands from a private mitigation banking company must pay a sum in lieu of ad valorem taxes to the county where the wetlands are located. The sum is equal to the estimated amount of ad valorem taxes that would have accrued for the next 20 years as computed in G.S. 146-22.3(c).

(b) Requirement for Acquisition. — A State agency may require, as a condition of accepting a donation of wetlands by a private mitigation banking company, that the company make adequate provisions for the long-term maintenance and management of the wetlands. These provisions may include reimbursement to the agency for payment of a sum in lieu of ad valorem taxes.

(c) Application. — This section applies only to land acquired in counties designated as a development tier one area under G.S. 143B-437.08. (2004-188, s. 5; 2006-252, s. 2.15.)

Effect of Amendments. — Session Laws 2006-252, s. 2.15, effective January 1, 2007, substituted "a development tier one area under G.S. 143B-437.08" for "an enterprise tier one or enterprise tier two area under G.S. 105-129.3" in subsection (c).

§ 146-22.5. Reimbursement of payment in lieu of future ad valorem taxes.

(a) If a State agency acquires land under G.S. 146-22.3 or G.S. 146-22.4 and later uses this land to mitigate wetlands permitted to be lost in the same county, then the county shall reimburse the State agency. The reimbursement shall equal the estimated amount of ad valorem taxes paid for the land in accordance with G.S. 146-22.3 minus ten percent (10%) of this amount multiplied by the number of years the State agency held the land before the wetlands were lost.

(b) Application. — This section applies only to land acquired in counties designated as a development tier one area under G.S. 143B-437.08. (2004-188, s. 6; 2005-435, s. 44; 2006-252, s. 2.16.)

Effect of Amendments. —

Session Laws 2006-252, s. 2.16, effective January 1, 2007, substituted "a development tier one area under G.S. 143B-437.08" for "an enterprise tier one or enterprise tier two area under G.S. 105-129.3" in subsection (b).

Article 7.

Dispositions.

§ 146-29. Procedure for sale, lease, or rental.

CASE NOTES

Discretionary Nature of Bidding Process. — Plaintiff public contracts bidder's 18 U.S.C.S. § 1962 Racketeer Influenced and Corrupt Organizations Act claims against defendants, a state official, other bidders, and co-conspirators, based upon illegal campaign contributions solicited by the official in connection with awarding state fair contracts, failed for lack of standing because being awarded contracts was an expectancy interest only and the discretionary criteria involved in the decision-making process, as evident from G.S. 146-29, 146-29.1, 143-129, in awarding contracts precluded proximate cause as required under 18 U.S.C.S. § 1964(c). Strates Shows v. Amusements of Am., 379 F. Supp. 2d 817, 2005 U.S. Dist. LEXIS 15741 (E.D.N.C. 2005).

§ 146-29.1. Lease or sale of real property for less than fair market value.

CASE NOTES

Discretionary Nature of Decisions. — Plaintiff public contracts bidder's 18 U.S.C.S. § 1962 Racketeer Influenced and Corrupt Organizations Act claims against defendants, a state official, other bidders, and co-conspirators, based upon illegal campaign contributions solicited by the official in connection with awarding state fair contracts, failed for lack of standing because being awarded contracts was an expectancy interest only and the discretionary criteria involved in the decision-making process, as evident from G.S. 146-29, 146-29.1, 143-129, in awarding contracts precluded proximate cause as required under 18 U.S.C.S. § 1964(c). Strates Shows v. Amusements of Am., 379 F. Supp. 2d 817, 2005 U.S. Dist. LEXIS 15741 (E.D.N.C. 2005).

Chapter 147.

State Officers.

Article 2A.

Annuities and Deferred Compensation for Teachers and State Employees.

Sec.
147-9.3. (Effective July 1, 2007) Annuity contracts; salary deductions.
147-9.4. (Effective July 1, 2007) Deferred Compensation Plan.

Article 3.

The Governor.

147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.
147-12. Powers and duties of Governor.

Article 3D.

State Information Technology Services.

Part 1. State Information Technology Management.

147-33.72F. Procurement procedures; cost savings.

Part 4. Procurement of Information Technology.

147-33.97. Information technology procurement policy; reporting requirements.

Article 4.

Secretary of State.

147-36. Duties of Secretary of State.
147-54. Printing, distribution and sale of the North Carolina Manual.

Sec.
147-54.7A. [Repealed.]

Article 4C.

Executive Branch Lobbying.

147-54.31 through 147-54.44. [Repealed.]

Article 5A.

Auditor.

147-64.7. Authority.
147-64.11. (Effective July 1, 2007) Review of office.

Article 6.

Treasurer.

147-68. (Effective July 1, 2007) To receive and disburse moneys; to make reports.
147-69.3. Administration of State Treasurer's investment programs.

Article 6A.

Cash Management.

147-86.10. (Effective July 1, 2007) Statement of policy.
147-86.11. (Effective July 1, 2007) Cash management for the State.

Article 6C.

Health and Wellness Trust Fund.

147-86.30. Health and Wellness Trust Fund established.
147-86.35. Health and Wellness Trust Fund; reporting requirements.

Article 2A.

Annuities and Deferred Compensation for Teachers and State Employees.

§ 147-9.3. (Effective July 1, 2007) Annuity contracts; salary deductions.

Notwithstanding the provisions of G.S. 143B-426.40A and notwithstanding any provision of law relating to salaries or salary schedules of State employees, if the employee be one described in section 403(b)(1)(A)(i) or (ii) of the United States Internal Revenue Code, the chief executive officer of such employee, on behalf of the employer, may enter into an annual contract with the employee which provides for a reduction in salary below the total established compensation or salary schedule for a term of one year. The chief executive officer shall use the funds derived from the reduction in the salary of the employee to

G.S. 147-9.3 is set out twice. See notes.

purchase a nonforfeitable annuity or retirement income contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective. The agreement for salary reduction referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prescribed by him. Notwithstanding any other provision of law, the amount by which the salary of an employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any. (1971, c. 433, s. 2; 1991, c. 389, s. 1; 2006-66, s. 6.19(a); 2006-203, s. 112; 2006-221, s. 3A; 2006-259, s. 40(a).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A, substituted G.S. 143B-426.39D for G.S. 143B-426-39A which had been substituted for "G.S. 143-3.3" by Session Laws 2006-203, s. 112. The reference to G.S. 143B-426.39D has been changed to G.S. 143B-426.40A at the direction of the Revisor of Statutes.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2006-259, s. 40(a), corrected internal references to recodified sections 143B-426.39D through 143B-426.39F, but was repealed by Session Laws 2006-259, s. 40(i), provided that SB 198, 2005 Regular Session [2006-221] becomes law, which it did.

Effect of Amendments. — Session Laws 2006-203, s. 112, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143B-426.39A" for G.S. 143-3.3," near the beginning of the section. See Editor's note.

§ 147-9.4. (Effective July 1, 2007) Deferred Compensation Plan.

Notwithstanding the provisions of G.S. 143B-426.40A and notwithstanding any provision of law relating to salaries or salary schedules of teachers or State employees, the chief executive officer of an employer, on behalf of the employer, may from time to time enter into a contract with a teacher or employee under which the teacher or employee irrevocably elects to defer receipt of a portion of his scheduled salary in the future, but only if, as a result of such contract, the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan established before January 1, 1983, and is not constructively received by the teacher or employee in the year in which it was earned, for State and federal income tax purposes. In addition, the income so deferred shall be invested in the manner provided in the applicable Plan; however, the teacher or employee may revoke his election to participate and may amend the amount of compensation to be deferred by signing and filing with the Board a written revocation or amendment on a form and in the manner approved by the Board. Any such revocation or amendment shall be effective prospectively only and shall cause no change in the allocation of amounts invested prior to the filing date of such revocation or amendment.

G.S. 147-9.4 is set out twice. See notes.

A teacher or employee who has agreed to the deferral of income pursuant to the Plan shall have the right to receive the income so deferred only in accordance with the provisions of the Plan. Funds so deferred shall not be in lieu of any amount earned by the teacher or employee before his election to defer compensation became effective. The agreement to defer income referred to herein shall be effective under such necessary regulations and procedures as are adopted by the Board, and on forms prepared or approved by it. A teacher or employee who agrees to defer income as provided in this section may authorize payroll deductions for deferral of the income. An employer shall make payroll deduction available for a teacher or employee who authorizes payroll deduction. Notwithstanding any other provisions of law, the amount by which the salary of a teacher or employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a teacher or employee, who elects to defer income pursuant to the North Carolina Public Employee Deferred Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment, except as provided by this section. (1971, c. 433, s. 3; 1983, c. 559, s. 3; 1985, c. 660, s. 4; 1989, c. 792, s. 2.10; 1991, c. 389, s. 1; 2006-66, s. 6.19(a); 2006-203, s. 113; 2006-221, s. 3A; 2006-259, s. 40(a).)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 6.19(a), as added by Session Laws 2006-221, s. 3A, substituted G.S. 143B-426.39D for G.S. 143B-426-39A which had been substituted for "G.S. 143-3.3" by Session Laws 2006-203, s. 113. The reference to G.S. 143B-426.39D has been changed to G.S. 143B-426.40A at the direction of the Revisor of Statutes.

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2006-259, s. 40(a), which corrected the internal references to 143B-426.40A, was repealed by Session Laws 2006-259, s. 40(i), provided that Senate Bill 198, 2005 Regular Session [2006-221] becomes law, which it did.

Effect of Amendments. — Session Laws 2006-203, s. 113, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143B-426.39A" for "G.S. 143-3.3," in the first sentence of the first paragraph. See Editor's note.

ARTICLE 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

(a) The salary of the Governor shall be one hundred thirty thousand six hundred twenty-nine dollars ($130,629) annually, payable monthly.

(b) He shall be paid annually the sum of eleven thousand five hundred dollars ($11,500) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly.

(c) In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by a warrant drawn on the State Treasurer. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C.S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5; 1979, 2nd Sess., c. 1137, s. 31; 1981, c. 1127, s. 7; 1983, c. 761, ss. 194, 195; c. 913, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 217; 1985, c. 479, s. 215; 1985 (Reg. Sess., 1986), c. 1014, s. 20; 1987, c. 738, s. 11; 1987 (Reg. Sess., 1988), c. 1086, ss. 6, 172; 1989, c. 752, ss. 23(a), (b), 167; 1991 (Reg. Sess., 1992), c. 900, ss. 32(a), (b), 182; 1993, c. 321, s. 48; 1993 (Reg. Sess., 1994), c. 769, s. 7.1; 1995, c. 507, s. 7.1(a); 1996, 2nd Ex. Sess., c. 18, s. 28(a); 1997-443, s. 33(a); 1998-153, s. 3(a); 1999-237, s. 28(a); 2000-67, s. 26(a); 2004-124, s. 31.1(b); 2005-276, s. 29.1(a); 2006-66, s. 22.1(a).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, s. 22.1(a), effective July 1, 2006, substituted "one hundred thirty thousand six hundred twenty-nine dollars ($130,629)" for "one hundred twenty-three thousand eight hundred nineteen dollars ($123,819)" in subsection (a).

§ 147-12. Powers and duties of Governor.

(a) In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

(1) To supervise the official conduct of all executive and ministerial officers; and when the Governor deems it advisable to visit all State institutions for the purpose of inquiring into the management and needs of the same.

(2) To see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the General Assembly therewith.

(3) **(Effective until July 1, 2007)** To make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, the Governor may also appoint to fill any vacancy occurring in that office, and the person the Governor appoints shall serve for the unexpired term of the office and until the person's successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of the office,

G.S. 147-12(a)(3) is set out twice. See note.

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b. During the continued absence of the regular holder of the office, or

c. During a vacancy in an office and pending the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

a. Upon the termination of the incapacity of the officer in whose stead the person acts,

b. Upon the return of the officer in whose stead the person acts, or

c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as the Governor deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of the office. The Governor may also determine that such incapacity has terminated.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor. Prior to taking any action under this paragraph, the Governor may consult with the Advisory Budget Commission.

(3) **(Effective July 1, 2007)** To make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, the Governor may also appoint to fill any vacancy occurring in that office, and the person the Governor appoints shall serve for the unexpired term of the office and until the person's successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of the office,

b. During the continued absence of the regular holder of the office, or

c. During a vacancy in an office and pending the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

a. Upon the termination of the incapacity of the officer in whose stead the person acts,

b. Upon the return of the officer in whose stead the person acts, or

c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as the Governor deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of the office. The Governor may also determine that such incapacity has terminated.

G.S. 147-12(a)(3) is set out twice. See note.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor.

(3a) To make appointments to fill vacancies in offices subject to appointment by the General Assembly as provided in G.S. 120-122.

(3b) Whenever a statute calls for the Governor to appoint one person from each congressional district to a board or commission, and at the time of enactment of that statute, the gubernatorial appointments do not cover all of the congressional districts, then the Governor, in filling vacancies on that board or commission as they occur, shall make appointments to satisfy that requirement, but shall not be required to remove any person from office to satisfy the requirement.

(3c) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an office subject to confirmation by the General Assembly, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives by May 15 of the year in which the appointment is to be made of the name of the person the Governor is submitting to the General Assembly for confirmation.

(3d) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an office subject to confirmation by the Senate, the Governor shall notify the President of the Senate by May 15 of the year in which the appointment is to be made of the name of the person the Governor is submitting to the General Assembly for confirmation.

(4) To be the sole official organ between the government of this State and other states, or the government of the United States.

(5) To have the custody of the great seal of the State.

(6) If the Governor is apprised by the affidavits of two responsible citizens of the State that there is imminent danger that the statute of this State forbidding prizefighting is about to be violated, the Governor shall use, as far as necessary, the civil and military power of the State to prevent it, and to have the offenders arrested and bound to keep the peace.

(7) Repealed by Session Laws 1997-443, s. 32.30(j), effective July 1, 1999.

(8) In carrying out ex officio duties, to designate the Governor's personal representative to attend meetings and to act in the Governor's behalf as the Governor directs.

(9) To appoint such personal staff as the Governor deems necessary to carry out effectively the responsibilities of the Governor's office.

(10) To contract in behalf of the State with the government of the United States to the extent allowed by the laws of North Carolina for the purpose of securing the benefits available to this State under the Federal Highway Safety Act of 1966. To that end, the Governor shall coordinate the activities of any and all departments and agencies of this State and its subdivisions relating thereto.

(11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. 20-4.01, are being blocked by privately owned and operated vehicles or by any other means, thereby impeding the free flow of goods and merchandise in North Carolina, if such information warrants, to declare that a state of emergency exists in the affected area, and to order that the Highway Patrol and/or national guard remove the offending vehicles or other causes of the blockade from the emergency area.

(12) To name and locate State government buildings, monuments, memorials, and improvements, as provided by G.S. 143B-373(1).

(13) To oversee and approve all memoranda of understanding and agreements between the State and foreign governments, as defined in G.S. 66-280(c), and international organizations. Any memoranda of understanding or agreements under this subsection to be signed on behalf of the State must first be approved by the Governor after review by the Attorney General, and after execution filed with the Secretary of State in accordance with G.S. 66-280.

(14) To negotiate and enter into Class III Tribal-State gaming compacts, and amendments thereto, on behalf of the State consistent with State law and the Indian Gaming Regulatory Act, Public Law 100-497, as necessary to allow a federally recognized Indian tribe to operate gaming activities in this State as permitted under federal law. The Governor shall report any gaming compact, or amendment thereto, to the Joint Legislative Commission on Governmental Operations.

(b) The Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 of each year detailed information on the enforcement of the littering laws of the State, including the number of charges and convictions under the littering laws of the State. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated annual report on or before March 1 of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources. (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C.S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285; 1967, c. 1253; 1973, c. 1148; 1981 (Reg. Sess., 1982), c. 1191, ss. 3, 4, 68; 1983, c. 913, s. 46; 1985, c. 122, s. 5; c. 757, s. 181(a); 1985 (Reg. Sess., 1986), c. 955, ss. 106, 107; 1997-14, s. 3; 1997-443, s. 32.30(j); 1999-260, s. 4; 2001-487, s. 92; 2001-512, s. 9; 2001-513, s. 29(a); 2006-6, s. 6; 2006-79, s. 15; 2006-203, s. 114; 2006-259, s. 33(a).)

Subdivision (a)(3) Set Out Twice. — The first version of subdivision (a)(3) set out above is effective until July 1, 2007. The second version of subdivision (a)(3) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-6, s. 12, provides: "Prosecutions for offenses committed before the effective dates in this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. If a final order by a court of competent jurisdiction prohibits possession or operation of video gaming machines by a federally recognized Indian tribe because that activity is not allowed elsewhere in this State, this act is void."

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-6, s. 6, as amended by Session Laws 2006-259, s. 33(a), effective June 6, 2006, added the last sentence to subdivision (a)(14).

Session Laws 2006-79, s. 15, effective July 10, 2006, deleted "and August 1" following "February 1" from the first and third sentences, in the last sentence, substituted "annual" for "semiannual" and deleted "and September 1" following "March 1."

Session Laws 2006-203, s. 114, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the last sentence in the last paragraph of subdivision (a)(3), which read: "Prior to taking any action under this paragraph, the Governor may consult with the Advisory Budget Commission."

ARTICLE 3D.

State Information Technology Services.

Part 1. State Information Technology Management.

§ 147-33.72F. Procurement procedures; cost savings.

Pursuant to Part 4 of this Article, the Office of Information Technology Services shall establish procedures for the procurement of information technology. The procedures may include aggregation of hardware purchases, the use of formal bid procedures, restrictions on supplemental staffing, enterprise software licensing, hosting, and multiyear maintenance agreements. The procedures may require agencies to submit information technology procurement requests to the Office of Information Technology Services on October 1, January 1, and June 1 of each fiscal year in order to allow for bulk purchasing. (2004-129, s. 2; 2006-264, s. 71.)

Effect of Amendments. — Session Laws 2006-264, s. 71, effective August 27, 2006, substituted "Office of Information Technology" for "Office of State Technology" in the first and last sentences.

Part 4. Procurement of Information Technology.

§ 147-33.97. Information technology procurement policy; reporting requirements.

(a) Policy. — In order to further the policy of the State to encourage and promote the use of small, minority, physically handicapped, and women contractors in State purchasing of goods and services, all State agencies covered by this Part shall cooperate with the Office in efforts to encourage the use of small, minority, physically handicapped, and women contractors in achieving the purpose of this Part, which is to provide for the effective and economical acquisition, management, and disposition of information technology.

(a1) A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

(a2) The State Chief Information Officer shall retain the statements required by subsection (a1) of this section regardless of the State entity that awards the contract and shall report annually to the Secretary of Administration on the number of contracts which are anticipated to be performed outside the United States.

(b) Reporting. — Every State agency that makes a direct purchase of information technology using the services of the Office shall report directly to the Department of Administration all information required by G.S. 143-48(b).

(c) The Department of Administration shall collect and compile the data described in this section and report it annually to the Office. (1999-434, s. 10; 2000-174, s. 2; 2006-264, s. 72(a).)

Effect of Amendments. — Session Laws 2006-264, s. 72(a), effective October 1, 2006, and applicable to all bids submitted on or after that date, added subsections (a1) and (a2).

ARTICLE 4.

Secretary of State.

§ 147-36. Duties of Secretary of State.

It is the duty of the Secretary of State:

(1) To perform such duties as may then be devolved upon the Secretary by resolution of the two houses of the General Assembly or either of them;

(2) To attend the Governor, whenever required by the Governor, for the purpose of receiving documents which have passed the great seal;

(3) To receive and keep all conveyances and mortgages belonging to the State;

(4) To distribute annually the statutes and the legislative journals;

(5) To distribute the acts of Congress received at the Secretary's office in the manner prescribed for the statutes of the State;

(6) To keep a receipt book, in which the Secretary shall take from every person to whom a grant shall be delivered, a receipt for the same; but may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;

(7) To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the State and maintain a record thereof;

(8) To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;

(9) To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;

(10) To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;

(11) To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;

(12) To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed;

(13) To receive and keep all oaths of public officials required by law to be filed in the Secretary's office, and as Secretary of State, is fully empowered to administer official oaths to any public official of whom an oath is required;

(14) To receive and maintain a journal of all appointments made to any State board, agency, commission, council or authority which is filed in the office of the Secretary of State;

(15) To regulate the solicitation of contributions pursuant to Chapter 131F of the General Statutes; and

(16) **(Effective until July 1, 2007)** To apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual in order to effectuate the purposes of the Nonprofit Corporation Act, Chapter 55A of the General Statutes, and to further aid in the operation and development of nonprofit corporations. The Secretary shall comply with the terms, conditions, and limitations of grants applied for and accepted and

G.S. 147-36(16) is set out twice. See note.

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shall expend grant funds pursuant to Article 1 of Chapter 143 of the General Statutes, The Executive Budget Act.

(16) **(Effective July 1, 2007)** To apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual in order to effectuate the purposes of the Nonprofit Corporation Act, Chapter 55A of the General Statutes, and to further aid in the operation and development of nonprofit corporations. The Secretary shall comply with the terms, conditions, and limitations of grants applied for and accepted and shall expend grant funds pursuant to Chapter 143C of the General Statutes, The State Budget Act. (1868-9, c. 270, s. 45; 1881, c. 63; Code, s. 3340; Rev., s. 5345; C.S., s. 7654; 1941, c. 379, s. 6; 1943, cc. 480, 543; 1967, c. 691, s. 53; 1973, c. 1379, s. 1; 1995, c. 20, s. 9; 1998-212, s. 12.14(c); 1999-316, s. 1; 2006-203, s. 115.)

Subdivision (16) Set Out Twice. — The first version of subdivision (16) set out above is effective until July 1, 2007. The second version of subdivision (16) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 115, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "Chapter 143C of the General Statutes, The State Budget Act" for "Article 1 of Chapter 143 of the General Statutes, The Executive Budget Act" at the end of subdivision (16).

§ 147-54. Printing, distribution and sale of the North Carolina Manual.

The Secretary of State shall have printed biennially for distribution and sale, two thousand three hundred fifty (2,350) copies of the North Carolina Manual, and shall make distribution to the State agencies, individuals, institutions and others as herein set forth.

NORTH CAROLINA STATE GOVERNMENT:

Members of the General Assembly	1 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2
Divisions of Archives and History, Director	1
Search Room	3
Publications Section	2
State Library	10
Libraries within State Agencies	1 ea.
Justices of the North Carolina Supreme Court	1 ea.
Judges of the North Carolina Court of Appeals	1 ea.
Judges of the North Carolina Superior Court	1 ea.
Supreme Court Library	12
Court of Appeals Library	2
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1

Reporter of the Supreme Court and Court of Appeals	1
Administrative Office of the Courts	5
NORTH CAROLINA EDUCATIONAL INSTITUTIONS:	
University of North Carolina System	
General Administration Offices	12
Chancellors of the Constituent Institutions	1 ea.
University of North Carolina — Chapel Hill Library	15
North Carolina State University Library	5
East Carolina University Library	5
North Carolina Central University Library	5
Appalachian State University Library	4
University of North Carolina — Charlotte Library	4
University of North Carolina — Greensboro Library	4
Western Carolina University Library	4
Other Constituent Institutions Libraries	3 ea.
North Carolina School of the Arts	2
University of North Carolina-Chapel Hill School of Government	2
Community Colleges and Technical Institutes	2 ea.
Private Colleges and Universities	
Duke University Library	6
Wake Forest University	6
Campbell University Library	5
Davidson College Library	4
All other Libraries of Senior and Junior Colleges	2 ea.
Public and Private Schools containing grades 8-12	1 ea.
COUNTY GOVERNMENT:	
Clerks of Court	1 ea.
Registers of Deeds	1 ea.
Public Libraries of North Carolina	1 ea.
FEDERAL GOVERNMENT:	
President of the United States	1
North Carolina Members of the Presidential Cabinet	1 ea.
North Carolina Members of the United States Congress	2 ea.
Library of Congress	3
Resident Judges of the Federal Judiciary and United States Attorneys in North Carolina	1 ea.
Secretaries of State of the United States and Territories	1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s). (1933, c. 115, s. 2; 1977, c. 378; 1995, c. 509, s. 101; 2001-424, s. 14F.1; 2006-264, s. 29(p).)

Effect of Amendments. — Session Laws 2006-264, s. 29(p), effective August 27, 2006, substituted "University of North Carolina-Chapel Hill School of Government" for "Institute of Government" in the middle of the table.

§ 147-54.7A: Repealed by Session Laws 2006-201, s. 19, effective January 1, 2007.

Editor's Note. — Session Laws 2006-201, s. 23, provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter

138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

ARTICLE 4C.

Executive Branch Lobbying.

§§ 147-54.31 through 147-54.44: Repealed by Session Laws 2006-201, s. 19, effective January 1, 2007.

Editor's Note. — Session Laws 2006-264, s. 99.4(c), amended former G.S. 147-54.39, effective January 1, 2007. The amendment never took effect.

Session Laws 2006-264, s. 99.4(d) and (e), amended former G.S. 147-54.41, effective January 1, 2007. The amendment never took effect.

Session Laws 2006-201, s. 23, provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

ARTICLE 5A.

Auditor.

§ 147-64.7. Authority.

(a) Access to Persons and Records. —

(1) The Auditor and his authorized representatives shall have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of any State agency. The review of State tax returns shall be limited to matters of official business and the Auditor's report shall not violate the confidentiality provisions of tax laws.

(2) The Auditor and his duly authorized representatives shall have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation which is in the possession of any individual, private corporation, institution, association, board, or other organization which pertain to:

a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.

b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State. In order to determine that payments to providers of social and medical services are legal and proper, the providers of such services will give the Auditor, or his authorized representatives, access to the records of recipients who receive such services.

(3) The Auditor shall, for the purpose of examination and audit authorized by this act, have the authority, and will be provided ready access, to examine and inspect all property, equipment, and facilities in the possession of any State agency or any individual, private corporation, institution, association, board, or other organization which were furnished or otherwise provided through grant, contract, or any other

type of funding by the State of North Carolina, or the federal government.

(4) All contracts or grants entered into by State agencies or political subdivisions shall include, as a necessary part, a clause providing access as intended by this section.

(5) The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as they relate to transactions with any agency of the State.

(b) **(Effective until July 1, 2007)** Experts; Contracted Audits. —

(1) The Auditor may obtain the services of independent public accountants, qualified management consultants, or other professional persons and experts as he deems necessary or desirable to carry out the duties and functions assigned under the act.

(2) No State agency may enter into any contract for auditing services which may impact on the State's comprehensive annual financial report without consultation with, and the prior written approval of, the Auditor, except in instances where audits are called for by the Governor under G.S. 143-3 and he shall so notify the Auditor. The Auditor shall prescribe policy and establish guidelines containing appropriate criteria for selection and use of independent public accountants, qualified management consultants, or other professional persons by State agencies and governing bodies to perform all or part of the audit function.

(b) **(Effective July 1, 2007)** Experts; Contracted Audits. —

(1) The Auditor may obtain the services of independent public accountants, qualified management consultants, or other professional persons and experts as he deems necessary or desirable to carry out the duties and functions assigned under the act.

(2) No State agency may enter into any contract for auditing services which may impact on the State's comprehensive annual financial report without consultation with, and the prior written approval of, the Auditor, except in instances where audits are called for by the Governor under G.S. 143C-2-1 and he shall so notify the Auditor. The Auditor shall prescribe policy and establish guidelines containing appropriate criteria for selection and use of independent public accountants, qualified management consultants, or other professional persons by State agencies and governing bodies to perform all or part of the audit function.

(c) Authority to Administer Oaths, Subpoena Witnesses and Records, and Take Depositions. —

(1) For the purposes of this Article the Auditor or his authorized representative shall have the power to subpoena witnesses, to take testimony under oath, to cause the deposition of witnesses (residing within or without the State) to be taken in a manner prescribed by law, and to assemble records and documents, by subpoena or otherwise. The subpoena power granted by this section may be exercised only at the specific written direction of the Auditor or his chief deputy.

(2) In case any person shall refuse to obey a subpoena, the Auditor shall invoke the aid of any North Carolina court within the jurisdiction of which the investigation is carried on or where such person may be, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Auditor or officers designated by the Auditor, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any

failure to obey such order of the court may be punished by such court as a contempt thereof. (1983, c. 913, s. 2; 1999-188, s. 1; 2006-203, s. 116.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2007. The second version of subsection (b) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 116, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-2-1" for "G.S. 143-3" in the first sentence of subdivision (b)(2).

§ 147-64.11. (Effective July 1, 2007) Review of office.

The Auditor may, on his own initiative and as often as he deems necessary, or as requested by the General Assembly, cause to be made a quality review audit of the operations of his office. Such a "peer review" shall be conducted in accordance with standards prescribed by the accounting profession. Upon the recommendation of the Joint Legislative Commission on Governmental Operations may contract with an independent public accountant, qualified management consultant, or other professional person to conduct a financial and compliance, economy and efficiency, and program result audit of the State Auditor. (1983, c. 913, s. 2; 2006-203, s. 117.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 117, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "the Advisory Budget Commission," following "recommendation of" in the last sentence.

Article 6.

Treasurer.

§ 147-68. (Effective July 1, 2007) To receive and disburse moneys; to make reports.

(a) It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the treasury of this State; and to pay all warrants legally drawn on the Treasurer.

(b) No moneys shall be paid out of the treasury except on warrant unless there is a legislative appropriation or authority to pay the same.

(c) It shall be the responsibility of the Treasurer to determine that all warrants presented to him for payment are valid and legally drawn on the Treasurer.

(d) The Treasurer shall report to the Governor annually and to the General Assembly at the beginning of each biennial session the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year.

G.S. 147-68 is set out twice. See notes.

(d1) The Treasurer shall report to the Joint Legislative Commission on Governmental Operations, to the Chairman, Appropriations Base Budget Committee and the Chairman, Appropriations Expansion Budget Committee of the House of Representatives, and to the Chairman, Committee on Appropriations and the Chairman, Committee on Base Budget of the Senate, on a quarterly basis, concerning all investments and deposits made by and through his office. The report shall include a listing of all investments with or on behalf of the State or any of its agencies or institutions and shall include the particular agency or institution, fund, rate of return, duration of the investment, and the amount of deposit on all noninterest bearing accounts. The first report is due 90 days after July 1, 1982, and shall include all investments and deposits made during the 1981-82 fiscal year and all investments made during the first quarter of the 1982-83 fiscal year; thereafter, reports shall be made on a quarterly basis including all investments and deposits made during that reporting period.

(d2) After consulting with the Select Committee on Information Technology and the Joint Legislative Commission on Governmental Operations and after consultation with and approval of the Information Resources Management Commission, the Department of State Treasurer may spend departmental receipts for the 2000-2001 fiscal year to continue improvement of the Department's investment banking operations system, retirement payroll systems, and other information technology infrastructure needs. The Department of State Treasurer shall report by January 1, 2001, and annually thereafter to the following regarding the amount and use of the departmental receipts: the Joint Legislative Commission on Governmental Operations, the Chairs of the General Government Appropriations Subcommittees of both the House of Representatives and the Senate, and the Joint Legislative Committee on Information Technology.

(e) The State Treasurer, in carrying out the responsibilities of this section, shall be independent of any fiscal control exercise by the Director of the Budget or the Department of Administration and shall be responsible to the General Assembly and the people of North Carolina for the efficient and faithful exercise of the responsibilities of his office. The State Treasurer, for all other purposes, is subject to Chapter 143C of the General Statutes. (1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C.S., s. 7682; 1955, c. 577; 1957, c. 269, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 65; 1983, c. 913, s. 52; 2000-67, s. 24A; 2003-284, s. 28.2(a); 2004-129, s. 46A; 2006-203, s. 118.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 118, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (d), deleted "and Advisory Budget Commission" following "to the Governor"; in subsection (e), deleted "the Advisory Budget Commission," preceding "the General Assembly" in the first sentence, and substituted "Chapter 143C" for "Article 1 of Chapter 143" in the last sentence.

§ 147-69.3. Administration of State Treasurer's investment programs.

(a) The State Treasurer shall establish, maintain, administer, manage, and operate within the Department of State Treasurer one or more investment programs for the deposit and investment of assets pursuant to the provisions of G.S. 147-69.1 and G.S. 147-69.2.

(b) Any official, board, commission, other public authority, local government, school administrative unit, local ABC board, or community college of the State having custody of any funds not required by law to be deposited with and invested by the State Treasurer may deposit all or any portion of those funds with the State Treasurer for investment in one of the investment programs established pursuant to this section, subject to any provisions of law with respect to eligible investments, provided that any occupational licensing board as defined in G.S. 93B-1 may participate in one of the investment programs established pursuant to this section regardless of whether or not the funds were required by law to be deposited with and invested by the State Treasurer. In the absence of specific statutory provisions to the contrary, any of those funds may be invested in accordance with the provisions of G.S. 147-69.2 and 147-69.3. Upon request from any depositor eligible under this subsection, the State Treasurer may authorize moneys invested pursuant to this subsection to be withdrawn by warrant on the State Treasurer.

(c) The State Treasurer's investment programs shall be so managed that in the judgment of the State Treasurer funds may be readily converted into cash when needed.

(d) Except as provided by G.S. 147-69.1(d), the total return earned on investments shall accrue pro rata to the fund whose assets are invested according to the formula prescribed by the State Treasurer with the approval of the Governor and Council of State.

(e) The State Treasurer has full powers as a fiduciary to hold, purchase, sell, assign, transfer, lend and dispose of any of the securities or investments in which any of the programs created pursuant to this section have been invested, and may reinvest the proceeds from the sale of those securities or investments and any other investable assets of the program.

(f) The cost of administration, management, and operation of investment programs established pursuant to this section shall be apportioned equitably among the programs in such manner as may be prescribed by the State Treasurer, such costs to be paid from each program, and to the extent not otherwise chargeable directly to the income or assets of the specific investment program or pooled investment vehicle, shall be deposited with the State Treasurer as a General Fund nontax revenue. The cost of administration, management, and operation of investment programs established pursuant to this section and not directly paid from the income or assets of such program shall be covered by an appropriation to the State Treasurer for this purpose in the Current Operations Appropriations Act.

(g) The State Treasurer is authorized to retain the services of independent appraisers, auditors, actuaries, attorneys, investment counseling firms, statisticians, custodians, or other persons or firms possessing specialized skills or knowledge necessary for the proper administration of investment programs created pursuant to this section.

(h) **(Effective until July 1, 2007)** The State Treasurer shall prepare, as of the end of each fiscal year, a report on the financial condition of each investment program created pursuant to this section. A copy of each report shall be submitted within 30 days following the end of the fiscal year to the official, institution, board, commission or other agency whose funds are invested, the State Auditor, the Advisory Budget Commission, and the chairs of the Finance Committees of the House of Representatives and the Senate.

(h) **(Effective July 1, 2007)** The State Treasurer shall prepare, as of the end of each fiscal year, a report on the financial condition of each investment program created pursuant to this section. A copy of each report shall be submitted within 30 days following the end of the fiscal year to the official, institution, board, commission or other agency whose funds are invested, the State Auditor, and the chairs of the Finance Committees of the House of Representatives and the Senate.

(i) The State Treasurer shall report at least twice a year to the General Assembly, through the Finance Committees of the House of Representatives and the Senate, on the investment programs created under this section. The Treasurer shall present the reports to a joint meeting of the Finance Committees. The chairs of the Finance Committees may receive the reports and call the meetings. The Finance Committees may meet during the interim as necessary to hear the reports from the State Treasurer. The State Treasurer's report and presentation to the Finance Committees shall include all of the following:

(1) A full and complete statement of all moneys invested by virtue of the provisions of G.S. 147-69.1 and G.S. 147-69.2.
(2) The nature and character of the investments.
(3) The revenues derived from the investments.
(4) The costs of administering, managing, and operating the investment programs, including the recapture of any investment commissions.
(5) A statement of the investment policies for the revenues invested.
(6) Any other information that may be helpful in understanding the State Treasurer's investment policies and investment results.
(7) Any other information requested by the Finance Committees.

(i1) The State Treasurer shall report the incentive bonus paid to the Chief Investment Officer to the Joint Legislative Commission on Governmental Operations by October 1 of each year.

(j) Subject to the provisions of G.S. 147-69.1(d), the State Treasurer shall adopt any rules necessary to carry out the provisions of this section. (1979, c. 467, s. 3; 1981, c. 445, ss. 4, 5; 1983, c. 515, s. 1; c. 702, s. 10; 1983 (Reg. Sess., 1984), c. 1034, ss. 116, 117; 1987, c. 751, ss. 6-8; 2001-444, s. 4; 2002-126, s. 6.12; 2005-276, s. 27.3; 2006-203, s. 119.)

Subsection (h) Set Out Twice. — The first version of subsection (h) set out above is effective until July 1, 2007. The second version of subsection (h) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 119, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "the Advisory Budget Commission," following "the State Auditor," in the last sentence of subsection (h).

ARTICLE 6A.

Cash Management.

§ 147-86.10. (Effective July 1, 2007) Statement of policy.

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, commissions, and officers of the State, whether or not subject to the State Budget Act, Chapter 143C of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to

G.S. 147-86.10 is set out twice. See notes.

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maximize interest-bearing investment of cash, and to minimize idle and nonproductive cash balances. This policy shall apply to the General Court of Justice as defined in Article IV of the North Carolina Constitution, the public school administrative units, and the community colleges with respect to the receipt, deposit, and disbursement of moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. This policy shall include the acceptance of electronic payments in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices. (1985, c. 709, s. 1; 1999-434, s. 2; 2006-203, s. 120.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 120, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act, Chapter 143C" for "Executive Budget Act, Chapter 143, Article 1" in the first sentence.

§ 147-86.11. (Effective July 1, 2007) Cash management for the State.

(a) Uniform Plan. — The State Controller, with the advice and assistance of the State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, "State agency" means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, 147-86.14, and 147-86.22, this Article does not apply to the agencies, institutions, bureaus, boards, commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units and community colleges and their officers and employees.

(b) Duties of Auditor. — The State Auditor pursuant to authority under G.S. 147-64.6 shall monitor agency compliance with this Article, and make any comments, suggestions, and recommendations the Auditor deems advisable to the agencies.

(c) Treasurer's Report. — The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of cash balances and a comparative analysis of earnings and investment performances.

(d) Earnings on Trust Funds. — The statewide cash management plan shall provide that any net earnings on invested funds, whose beneficial owner is not the State or a local governmental unit, shall be paid to the beneficial owners of the funds. "Net earnings" are the amounts remaining after allowance for the cost of administration, management, and operation of the invested funds.

(e) Elements of Plan. — For moneys received or to be received, the statewide cash management plan shall provide at a minimum that:

G.S. 147-86.11 is set out twice. See notes.

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(1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:

a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.

b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.

(2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by statute.

(3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and deposited.

(4) Unpaid billings due to a State agency shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing, except that a State agency need not turn over to the Attorney General unpaid billings of less than five hundred dollars ($500.00), or (for institutions where applicable) amounts owed by all patients which are less than the federally established deductible applicable to Part A of the Medicare program, and instead may handle these unpaid bills pursuant to agency debt collection procedures.

(5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.

(6) State agencies shall accept payment by electronic payment in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices.

(f) Disbursement Requirements. — For the disbursement of money, the statewide cash management plan shall provide at a minimum that:

(1) Moneys deposited with the State Treasurer remain on deposit with the State Treasurer until final disbursement to the ultimate payee.

(2) The order in which appropriations and other available resources are expended shall be subject to the provisions of Chapter 143C of the General Statutes regardless of whether the State agency disbursing or expending the moneys is subject to the State Budget Act.

(3) Federal and other reimbursements of expenditures paid from State funds shall be paid immediately to the source of the State funds.

(4) Billings to the State for goods received or services rendered shall be paid neither early nor late but on the discount date or the due date to the extent practicable.

(5) Disbursement cycles for each agency shall be established to the extent practicable so that the overall efficiency of the warrant disbursement system is maximized while maintaining prompt payment of bills due.

(g) Interest Maximized. — The interest earnings of the General Fund and Highway Fund shall be maximized to the extent practicable. To this end:

(1) Interest earnings shall not be allocated to an account by the State Treasurer unless all of the moneys in the account are expressly eligible by law for receiving interest allocations.

(2) State officers and employees who received moneys in trust or for investment shall be solely responsible for properly segregating such funds for investment in the manner prescribed by law. The officer or employee charged with the responsibility for these moneys shall be under a duty to segregate the funds in a timely manner. No investment income shall be allocated by the State Treasurer to trust or other

G.S. 147-86.11 is set out twice. See notes.

investment accounts until properly segregated into investment accounts as provided by law and the rules of the State Treasurer.

(h) New Technologies. — The statewide cash management plan shall consider new technologies and procedures whenever the technologies and procedures are economically beneficial to the State as a whole. Where the new technologies and procedures may be implemented without additional legislation, the technologies and procedures shall be implemented in the plan.

(i) Penalty. — A willful or continued failure of an employee paid from State funds or employed by a State agency to follow the statewide cash management plan is sufficient cause for immediate dismissal of the employee. (1985, c. 709, s. 1; 1985 (Reg. Sess., 1986), c. 1024, s. 26; 1987, c. 564, s. 32; c. 738, s. 59(a)(1); 1991, c. 95, s. 1; c. 542, s. 15; 1999-434, s. 4; 2006-203, s. 121.)

Section Set Out Twice. — The section above is effective July 1, 2007. For the section as in effect until July 1, 2007, see the main volume.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 121, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (a), deleted "the Advisory Budget Commission and" preceding "the General Assembly"; and in subdivision (f)(2), substituted "Chapter 143C of the General Statutes" for "G.S. 143-27" and "State Budget Act" for "Executive Budget Act."

ARTICLE 6C.

Health and Wellness Trust Fund.

§ 147-86.30. Health and Wellness Trust Fund established.

(a) Fund Established. — There is established the Health and Wellness Trust Fund in the Office of the State Treasurer to be used to develop a comprehensive plan to finance programs and initiatives to improve the health and wellness of the people of North Carolina. As used in this Article, the term "Fund" means the Health and Wellness Trust Fund. It is the intent of the General Assembly that the funds provided pursuant to this Article to address the health needs of North Carolinians be used to supplement, not supplant, existing funding of health and wellness programs.

(b) Fund Earnings, Assets, and Balances. — The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the chair of the Commission, pursuant to directives of the Commission. The Commission may expend moneys in the Fund only as provided in subsections (c) and (d) of this section.

(c) **(Effective until July 1, 2007)** Priority Use of Funds. — As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-124. The chair of the Commission must issue a warrant from the Fund to the

G.S. 147-86.30(c) is set out twice. See note.

General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%).

(c) **(Effective July 1, 2007)** Priority Use of Funds. — As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-124. The chair of the Commission must issue a warrant from the Fund to the General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%).

G.S. 143C-9-3

(d) Use of Remaining Funds. — The Commission may expend or commit moneys in the Fund in a fiscal year only after the payment required by subsection (c) of this section has been made.

(e) Fund Purposes. — Moneys from the Fund may be used for any of the following purposes:

(1) To address the health needs of vulnerable and underserved populations in North Carolina.

(2) To fund programs and initiatives that include research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs.

(3) To develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use. The plan shall include measurable health and wellness objectives and a proposed timetable for achieving these objectives. In developing the plan, the Commission shall consider all facets of health, including prevention, education, treatment, research, and related areas.

(f) Limit on Operating and Administrative Expenses. — No more than two and one-half percent (2 1/2%) of the annual receipts of the Fund for the fiscal year beginning July 1 or a total of one million dollars ($1,000,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Commission and its staff. All administrative expenses of the Commission shall be paid from the Fund. (2000-147, s. 2; 2004-179, s. 1.3; 2006-203, s. 122.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 2007. The second version of subsection (c) set out above is effective July 1, 2007.

Editor's Note. —

This section was amended by Session Laws 2006-203, s. 122, effective July 1, 2007, in the coded bill drafting format provided by G.S. 120-20.1. The 2006 amendment failed to account for changes made to the section by Session Laws 2004-179, s. 1.3. The second version of subsection (c) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 122, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-9-3" for "G.S. 143-16.4" in subsection (c). See Editor's note.

§ 147-86.35. Health and Wellness Trust Fund; reporting requirements.

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and to the chairs of the Joint Legislative Health Care Oversight Committee regarding implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Commission on Governmental Operations. The annual report shall also include a summary of each recipient's annual report submitted to the Health and Wellness Trust Fund Commission pursuant to G.S. 147-86.31(b) and an analysis of progress toward the goals and objectives of any comprehensive, community-based plan established pursuant to G.S. 147-86.30(e)(3). A written copy of the annual report shall also be sent to the Legislative Library by November 1 each year. Written reports shall also be sent on a quarterly basis to the Joint Legislative Commission on Governmental Operations.

(b) **(Effective until July 1, 2007)** Any non-State entity as that term is defined in G.S. 143-6.2 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143-6.2.

(b) **(Effective July 1, 2007)** Any non-State entity as that term is defined in G.S. 143C-1-1 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143C-6-23. (2000-147, s. 2; 2004-196, s. 3; 2006-203, s. 123.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2007. The second version of subsection (b) set out above is effective July 1, 2007.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 123, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-1-1" for "G.S. 143-6.2" and "G.S. 143C-6-23" for "G.S. 143-6.2" in subsection (b).

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

§ 148-2. Prison moneys and earnings.

Editor's Note. —
Session Laws 2005-276, s. 17.9, as amended by Session Laws 2006-66, s. 16.9, provides: "Notwithstanding the provisions of G.S. 148-2, the Department of Correction may use up to the sum of one million dollars ($1,000,000) during the 2006-2007 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Article 2.

Prison Regulations.

§ 148-19. Health services.

Editor's Note. — Session Laws 2005-276, s. 17.7, as amended by Session Laws 2006-66, s. 16.2, provides: "(a) The Department of Correction may convert contract medical positions to permanent State medical positions if the Department can document in each request submitted to the Office of State Budget and Management that the total savings generated will exceed the total cost of the new positions.

"(b) The Department of Correction shall report by April of each year to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on all conversions made pursuant to this section, by type of position and location, and on the savings generated."

Article 3.

Labor of Prisoners.

§ 148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.

CASE NOTES

Cited in Easton v. J.D. Denson Mowing, 173 N.C. App. 439, 620 S.E.2d 201, 2005 N.C. App. LEXIS 2014 (2005).

§ 148-49. Prison indebtedness not assumed by Board of Transportation.

CASE NOTES

Cited in State v. Ware, 173 N.C. App. 434, 618 S.E.2d 830, 2005 N.C. App. LEXIS 2039 (2005).

Chapter 150B.

Administrative Procedure Act.

Article 1.

General Provisions.

Sec.
150B-1. Policy and scope.

Article 2A.

Rules.

Part 2. Adoption of Rules.

150B-21.4. Fiscal notes on rules.

Part 4. Publication of Code and Register.

Sec.
150B-21.17. North Carolina Register.

Article 3.

Administrative Hearings.

150B-22.1. Special education petitions.

ARTICLE 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. — This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. — This Chapter confers procedural rights.

(c) Full Exemptions. — This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.
(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
(3) The Utilities Commission.
(4) The Industrial Commission.
(5) The Employment Security Commission.
(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
(7) The North Carolina State Lottery.

(d) Exemptions from Rule Making. — Article 2A of this Chapter does not apply to the following:

(1) The Commission.
(2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.
(3) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.
(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.
(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.
(7) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in administering the provisions of Parts 2, 3, 4, and 5 of Article 3 of Chapter 135 of the General Statutes.

(8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan required by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.

(9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program.

(10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.

(11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 143B-454(a)(11).

(12) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Site Infrastructure Development Program under G.S. 143B-437.02.

(13) The Department of Commerce and the Governor's Office in developing guidelines for the One North Carolina Fund under Part 2H of Article 10 of Chapter 143B of the General Statutes.

(14) The Community Colleges System Office in developing guidelines for the Community College Facilities and Equipment Fund.

(15) The Department of Commerce in developing guidelines for the North Carolina Economic Development Reserve.

(16) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes.

(e) Exemptions From Contested Case Provisions. — The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) Repealed by Session Laws 1993, c. 501, s. 29.

(3), (4) Repealed by Session Laws 2001-474, s. 35, effective November 29, 2001.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) The Department of Revenue.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in G.S. 136-29.

(9) The North Carolina Occupational Safety and Health Review Commission.

(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7.

(12) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan with respect to disputes involving the perfor-

mance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan.

(13) The Teachers' and State Employees' Comprehensive Major Medical Plan with respect to determinations by the Executive Administrator and Board of Trustees, the Plan's designated utilization review organization, or a self-funded health maintenance organization under contract with the Plan that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.

(14) The Department of Crime Control and Public Safety for hearings and appeals authorized under Chapter 20 of the General Statutes.

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(f) Exemption for the University of North Carolina. — Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147, s. 2; c. 927, s. 13; 1985, c. 746, ss. 1, 19; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44); 1989 (Reg. Sess., 1990), c. 1004, s. 36; 1991, c. 103, s. 1; c. 418, s. 2; c. 477, s. 1; c. 749, ss. 9, 10; 1991 (Reg. Sess., 1992), c. 1030, s. 46; 1993, c. 501, s. 29; 1993 (Reg. Sess., 1994), c. 777, ss. 4(j), 4(k); 1995, c. 249, s. 4; c. 507, s. 27.8(m); 1997-35, s. 2; 1997-278, s. 1; 1997-412, s. 8; 1997-443, ss. 11A.110, 11A.119(a); 2000-189, s. 14; 2001-192, s. 1; 2001-299, s. 1; 2001-395, s. 6(c); 2001-424, ss. 6.20(b), 21.20(c); 2001-446, s. 5(d); 2001-474, ss. 34, 35; 2001-496, s. 8(c); 2002-99, s. 7(b); 2002-159, ss. 31.5(b), 49; 2002-172, s. 2.6; 2002-190, s. 16; 2003-226, s. 17(b); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 1.3; 2004-88, s. 1(e); 2005-133, s. 10; 2005-276, s. 31.1(ff); 2005-300, s. 1; 2005-344, s. 11.1; 2005-455, s. 3.3; 2006-66, ss. 12.8(c), 8.10(d); 2006-201, s. 2(a).)

Editor's Note. —

Subdivision (d)(15) was enacted as subdivision (d)(14) by Session Laws 2006-66, s. 12.8(c). Subdivision (d)(16) was enacted as subdivision (d)(14) by Session Laws 2006-201, s. 2(a). They have been redesignated as subdivisions (d)(15) and (d)(16), respectively, at the direction of the Revisor of Statutes.

Session Laws 2005-133, s. 1, effective June 29, 2005, as amended by Session Laws 2006-226, s. 30, provides: "Under the Occupational Safety and Health Act of North Carolina, the name of the Safety and Health Review Board is changed to the North Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes is authorized to substitute the term 'Commission' for the term 'Board' wherever that term appears in the General Statutes in relation to the Act. The Revisor of Statutes is also authorized to insert the words 'North Carolina Occupational' in front of the phrase 'Safety and Health Review Commission' wherever that phrase appears in the General Statutes in relation to the Act."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-201, s. 23, provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Effect of Amendments. —

Session Laws 2006-66, ss. 8.10(d) and 12.8(c), effective July 1, 2006, added subdivisions (d)(14) and (d)(15), respectively.

Session Laws 2006-201, s. 2(a), effective October 1, 2006, and applicable to covered persons and legislative employees on or after January 1, 2007, to gifts received on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007, added subdivision (d)(16).

CASE NOTES

The 2003 version of G.S. 150B-34(c), which excluded the Certificate of Need Act, G.S. 131E-175 et seq., from the requirements of G.S. 150B-36(b), (b1), (b2), (b3), and (d) and G.S. 150B-51, left the scope and standard of review applied under the 1999 version of G.S. 150B-51 undisturbed. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

Applied in Googerdy v. N.C. Agric. & Tech. State Univ., 386 F. Supp. 2d 618, 2005 U.S. Dist. LEXIS 24545 (M.D.N.C. Aug. 24, 2005).

§ 150B-2. Definitions.

CASE NOTES

"Substantial Evidence." — Administrative law judge and trial court did not err in finding contradictions in the testimony of a supervisor and an employee whom the supervisor promoted; based on the inconsistencies in testimony by the supervisor and the employee, relevant evidence existed that a reasonable mind might accept as adequate to support the conclusion that their versions were contradictory. Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

Substantial Evidence Supported Awarding Certificate of Need. — The findings by the North Carolina Department of Health and Human Services in awarding a certificate of need to an applicant, under the whole record test, were supported by substantial evidence, that is, relevant evidence that a reasonable mind might have accepted as adequate to support a conclusion, pursuant to G.S. 150B-2(8b). Total Renal Care of N.C., LLC v. N.C.HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

Cited in Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Trayford v. N.C. Psychology Bd., 174 N.C. App. 118, 619 S.E.2d 862, 2005 N.C. App. LEXIS 2286 (2005); In re Lustgarten, — N.C. App. —, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006).

§ 150B-4. Declaratory rulings.

CASE NOTES

Plaintiff Failing to Exhaust Administrative Remedies Not Entitled to Judicial Relief. —

Work First benefits recipient's appeal of the denial of a declaratory judgment that the Work First Manual violated the Americans With Disabilities Act, 42 U.S.C.S. § 12101 et seq., was dismissed as the recipient failed to exhaust her administrative remedies; she could have sought a declaratory ruling under G.S. 150B-4 and the trial court did not obtain subject matter jurisdiction over the complaint. Chatmon v. N.C. HHS, — N.C. App. —, 622 S.E.2d 684, 2005 N.C. App. LEXIS 2711 (2005).

ARTICLE 2A.

Rules.

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.3(e), as amended by Session Laws 2006-198, s. 1, provides: "Services and Payment Bases. — Funds appropriated for Medicaid services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

"(1) Hospital inpatient.

"(2) Hospital outpatient. — Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.

"(3) Nursing facilities. — Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare. The Division of Medical Assistance shall allow nursing facility providers sufficient time from the effective date of this act to certify additional Medicare beds if necessary. In determining the date that the requirements of this subdivision become effective, the Division of Medical Assistance shall consider the regulations governing certification of Medicare beds and the length of time required for this process to be completed.

"(4) Physicians, certified nurse midwife services, nurse practitioners. — Fee schedules as development by the Department of Health and Human Services.

"(5) Community Alternative Program, EPSDT Screens. — Payments in accordance with rate schedule developed by the Department of Health and Human Services.

"(6) Home health and related services, durable medical equipment. — Payments according to reimbursement plans developed by the Department of Health and Human Services.

"(7) Hearing aids. — Wholesale cost plus dispensing fee to provider.

"(8) Rural health clinical services. — Provider-based, reasonable cost; non-provider-based, single cost reimbursement rate per clinic visit.

"(9) Family planning. — Negotiated rate for local health departments. For other providers see specific services, e.g. hospitals, physicians.

"(10) Independent laboratory and X-ray services. — Uniform fee schedules as developed by the Department of Health and Human Services.

"(11) Ambulatory surgical centers.

"(12) Private duty nursing, clinic services, prepaid health plans.

"(13) Intermediate care facilities for the mentally retarded.

"(14) Chiropractors, podiatrists, optometrists, dentists.

"(15) Limitations on Dental Coverage. — Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.

"(16) Medicare Buy-In. — Social Security Administration premium.

"(17) Ambulance services. — Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

"(18) Optical supplies. — Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.

"(19) Medicare crossover claims. — The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services.

"(20) Physical therapy, occupational therapy, and speech therapy. — Services limited to EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services. Physical therapy, occupational therapy, and speech therapy services are subject to prior approval and utilization review.

"(21) Personal care services.

"(22) Case management services. — Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.

"(23) Hospice.

"(24) Medically necessary prosthetics or orthotics. — In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification, or in the case of ocular prosthetists Board certified, licensed, or accredited in accordance with the requirements established by the Department. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.

"(25) Health insurance premiums.

"(26) Medical care/other remedial care. — Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates.

"(27) Pregnancy-related services. — Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

"(28) Drugs. — Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription for generic drugs and four dollars ($4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

"Limitations on quantity. — The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". In addition to the entities listed in subsection (a) of this section, the Department shall report to the Joint Legislative Commission on Governmental Operations on authorizations, limitations, and reviews established under this subparagraph, including limitations on monthly brand-name and generic prescriptions as well as restrictions on the total number of medications. The Department shall submit the report not later than May 1, 2006.

"Dispensing of generic drugs. — Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for atypical antipsychotic drugs and drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". An initial prescription order for an atypical antipsychotic drug or a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

"Prior authorization. — The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of: (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, and major depressive disorder, or (ii) HIV/AIDS.

"(29) Other mental health services. — Unless otherwise covered by this section, coverage is limited to:

"a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and

"b. For children eligible for EPSDT services provided by:

"1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and

"2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

"c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and licensed clinical supervisors, Medicaid-eligible adults may be self-referred.

"d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

"e. The Department of Health and Human Services shall not enroll licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addiction specialists, and licensed clinical supervisors until all of the following conditions have been met:

"1. The fiscal impact of payments to these qualified providers has been projected;

"2. Funding for any projected requirements in excess of budgeted Division of Medical Assistance funding has been identified from within State funds appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to support area mental health programs or county programs, or identified from other sources; and

"3. Approval has been obtained from the Office of State Budget and Management to transfer these State or other source funds from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to the Division of Medical Assistance. Upon approval and implementation, the Department of Health and Human Services shall, on a quarterly basis, provide a status report to the Office of State Budget and Management and the Fiscal Research Division.

"Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2 of this subdivision shall be established by the Division of Medical Assistance."

Session Laws 2006-66, s. 10.3(h), provides: "Rules, Reports, and Other Matters. —

"(1) Rules. — The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

"(2) Changes to Medicaid program; reports. — The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval. In addition to the entities listed in subsection (a)(4) of this section, the report shall be submitted to the Joint Legislative Health Care Oversight Committee."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-240, s. 5, provides: "The Governor's Commission on Early Childhood Vision Care may adopt temporary rules in accordance with G.S. 150B-21.1 to implement this act."

Session Laws 2006-264, s. 52(b), provides: "This section constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a). The Department of Labor shall adopt within 30 days of the effective date of this section temporary rules to clarify when employees who are subject to Article 20 of Chapter 95 of the General Statutes may utilize a preliminary screening procedure involving a single-use test device consistent with this section."

Session Laws 2006-264, s. 102(a) and (b), provides: "(a) The Department of Labor shall adopt rules in connection with its requirements regarding fall protection for tower climbers as follows:

"(1) With regard to employer-provided rescue procedures, employers must ensure that at least two trained and designated rescue employees are on-site when employees are working at heights over six feet on the tower, except that where only two employees are on-site, then an employer may comply with this requirement if one employee is a trained and designated rescue employee and one employee has been employed for less than nine months and has received documented orientation from the employer outlining steps to take in an emergency.

"(2) With regard to third-party-provided rescue procedures, the employer must obtain verification from the third-party rescue service that the service is able to respond to a rescue summons in a timely manner and that the service is proficient in rescue-related tasks and equipment needed to rescue climbers from elevated heights on communication structures. The employer must also provide the selected third-party rescue service with contact information regarding the tower site and allow the service to conduct whatever preparation for rescue it deems necessary.

"(b) Notwithstanding G.S. 150B-21.1(a), the Department of Labor may adopt the rules provided for by this section as temporary rules within 270 days after the effective date of this act."

§ 150B-21.1A. Adoption of an emergency rule.

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 10.3(h), provides: "Rules, Reports, and Other Matters. —

"(1) Rules. — The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

"(2) Changes to Medicaid program; reports. — The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval. In addition to the entities listed in subsection (a)(4) of this section, the report shall be submitted to the Joint Legislative Health Care Oversight Committee."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 150B-21.4. Fiscal notes on rules.

(a) **(Effective until July 1, 2007)** State Funds. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was

G.S. 150B-21.4(a) is set out twice. See note.

computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a) **(Effective July 1, 2007)** State Funds. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. — In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of the Governor as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. — Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or prepare a fiscal note for the proposed rule change and have the note approved by that Office. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change may prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of

State Budget and Management must review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency may ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact.

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least three million dollars ($3,000,000) in a 12-month period.

(b2) Content. — A fiscal note required by subsection (b1) of this section must contain the following:

(1) A description of the persons who would be affected by the proposed rule change.
(2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.
(3) A description of the purpose and benefits of the proposed rule change.
(4) An explanation of how the estimate of expenditures was computed.

(c) Errors. — An erroneous fiscal note prepared in good faith does not affect the validity of a rule. (1973, c. 1331, s. 1; 1979, 2nd Sess., c. 1137, s. 41.1; 1983, c. 761, s. 185; 1985, c. 746, s. 1; 1987, c. 827, s. 54; 1991, c. 418, s. 1; 1995, c. 415, s. 2; c. 507, s. 27.8(b); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 6; 2005-276, s. 28.8(a); 2006-203, s. 124.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2007. The second version of subsection (a) set out above is effective July 1, 2007.

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-203, s. 124, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act, Chapter 143C of the General Statutes" for "Executive Budget Act, Article 1 of Chapter 143," in the first sentence of subsection (a).

Part 3. Review by Commission.

§ 150B-21.9. Standards and timetable for review by Commission.

CASE NOTES

Commission's Authority. — General assembly has given the North Carolina Rules Review Commission the authority to determine whether a proposed rule is within the authority delegated to the agency by the legislature; where, only after the pharmacy board received an unfavorable outcome regarding its proposed pharmacist hours rule did it allege the process was unconstitutional, the board was estopped from raising a constitutional challenge to the commission's authority, and the trial court did not err by refusing to rule on that challenge. N.C. Bd. of Pharm. v. Rules Review Comm'n, 174 N.C. App. 301, 620 S.E.2d 893, 2005 N.C. App. LEXIS 2362 (2005).

Part 4. Publication of Code and Register.

§ 150B-21.17. North Carolina Register.

(a) Content. — The Codifier of Rules must publish the North Carolina

Register. The North Carolina Register must be published at least two times a month and must contain the following:

- (1) Temporary rules entered in the North Carolina Administrative Code.
- (1a) The text of proposed rules and the text of permanent rules approved by the Commission.
- (1b) Emergency rules entered into the North Carolina Administrative Code.
- (2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.
- (3) Executive orders of the Governor.
- (4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.
- (5) Orders of the Tax Review Board issued under G.S. 105-241.2.
- (6) Other information the Codifier determines to be helpful to the public.

(b) Form. — When an agency publishes notice in the North Carolina Register of the proposed text of a new rule, the Codifier of Rules must publish the complete text of the proposed new rule. In publishing the text of a proposed new rule, the Codifier must indicate the rule is new by underlining the proposed text of the rule.

When an agency publishes notice in the North Carolina Register of the proposed text of an amendment to an existing rule, the Codifier must publish the complete text of the rule that is being amended unless the Codifier determines that publication of the complete text of the rule being amended is not necessary to enable the reader to understand the proposed amendment. In publishing the text of a proposed amendment to a rule, the Codifier must indicate deleted text with overstrikes and added text with underlines.

When an agency publishes notice in the North Carolina Register of the proposed repeal of an existing rule, the Codifier must publish the complete text of the rule the agency proposes to repeal unless the Codifier determines that publication of the complete text is impractical. In publishing the text of a rule the agency proposes to repeal, the Codifier must indicate the rule is to be repealed.

(c) The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Register. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(k); 2001-141, s. 6; 2001-421, s. 1.4; 2003-229, s. 11; 2006-66, s. 18.1.)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 18.1, effective July 1, 2006, added subsection (c).

Article 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

CASE NOTES

Authority To Settle. — Where the North Carolina Department of Health and Human Services and the applicant engaged in litigation to determine whether the applicant's assisted living center projects were exempt from a moratorium on such projects, the Department and the North Carolina Attorney General properly exercised their statutory authority under N.C. Gen. Stat. § 150B-22 to settle the litigation. Carillon Assisted Living, L.L.C. v. N.C. HHS, — N.C. App. —, 623 S.E.2d 629, 2006 N.C. App. LEXIS 60 (2006).

Applied in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

§ 150B-22.1. Special education petitions.

(a) Notwithstanding any other provision of this Chapter, timelines and other procedural safeguards required to be provided under IDEA and Article 9 of Chapter 115C of the General Statutes must be followed in an impartial due process hearing initiated when a petition is filed under G.S. 115C-109.6 with the Office of Administrative Hearings.

(b) The administrative law judge who conducts a hearing under G.S. 115C-109.6 shall not be a person who has a personal or professional interest that conflicts with the judge's objectivity in the hearing. Furthermore, the judge must possess knowledge of, and the ability to understand, IDEA and legal interpretations of IDEA by federal and State courts. The judges are encouraged to participate in training developed and provided by the State Board of Education under G.S. 115C-107.2(h)[(g)].

(c) For the purpose of this section, the term "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and its regulations. (2006-69, s. 5.)

Editor's Note. — Session Laws 2006-69, s. 8, made this section effective July 10, 2006.

The bracketed reference, "[(g)]" in subsection (b), was added at the direction of the Revisor of Statutes as it appears to be the intended reference.

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

CASE NOTES

Notice Sufficient. — Notice of hearing did not list the statutes and rules involved or give a short and plain statement of the facts, but those details were unnecessary since the department had filed its prehearing statement. Lincoln v. N.C. HHS, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Notice Held Insufficient to Comply with Due Process. —

Letter to an employee after her termination while on medical leave that expressed sympathy for her medical condition and reiterated facts regarding the employee's termination did not constitute sufficient notice of the decision or action regarding the grievance filed by the employee, which triggered the right to appeal for purposes of G.S. 126-38; because the employer, the Department of Social Services (DSS), failed to provide the notice required under G.S. 150B-23(f) as to appealing her termination, an administrative law judge properly denied the DSS' motion to dismiss the appeal as untimely. Early v. County of Durham Dep't of Soc. Servs., 172 N.C. App. 344, 616 S.E.2d 553, 2005 N.C. App. LEXIS 1788 (2005).

Substantial Prejudice Not Shown. — In a hospital's contested case petition under G.S. 131E-188(a) to challenge the conditional approval of a certificate of need (CON) permitting a medical center to expand its emergency room facilities, the medical center was entitled to summary judgment because the hospital did not prove substantial prejudice from the CON under G.S. 150B-23(a); the hospital's claim of prejudice from challenges by the medical center to a facility it was building had been declared moot in another action, and judicial estoppel did not bar the medical center from claiming that the hospital was not substantially prejudiced because the other action was not related and did not stem from a common set of circumstances. Presbyterian Hosp. v. N.C. HHS, — N.C. App. —, 630 S.E.2d 213, 2006 N.C. App. LEXIS 1184 (2006).

§ 150B-29. Rules of evidence.

CASE NOTES

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005); McGladrey & Pullen, LLP v. N.C. State Bd. of CPA Exam'rs, 171 N.C. App. 610, 615 S.E.2d 339, 2005 N.C. App. LEXIS 1274 (2005), cert. denied, notice of appeal dismissed, 360 N.C. 65, 621 S.E.2d 627 (2005); Total Renal Care of N.C., LLC v. N.C.HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005); Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

§ 150B-30. Official notice.

CASE NOTES

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005); McGladrey & Pullen, LLP v. N.C. State Bd. of CPA Exam'rs, 171 N.C. App. 610, 615 S.E.2d 339, 2005 N.C. App. LEXIS 1274 (2005), cert. denied, notice of appeal dismissed, 360 N.C. 65, 621 S.E.2d 627 (2005); Total Renal Care of N.C., LLC v. N.C.HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005); Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

§ 150B-31. Stipulations.

CASE NOTES

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005); McGladrey & Pullen, LLP v. N.C. State Bd. of CPA Exam'rs, 171 N.C. App. 610, 615 S.E.2d 339, 2005 N.C. App. LEXIS 1274 (2005), cert. denied, notice of appeal dismissed, 360 N.C. 65, 621 S.E.2d 627 (2005); Total Renal Care of N.C., LLC v. N.C.HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005); Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

§ 150B-33. Powers of administrative law judge.

CASE NOTES

Cited in Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005).

§ 150B-34. Decision of administrative law judge.

CASE NOTES

Standard of Review for Certificate of Need. — Final sentence of G.S. 150B-34(c) exempts certificate of need proceedings from the newly amended portions of G.S. 150B-51 and requires an appellate court to review those decisions under the previous version of G.S. 150B-51. Total Renal Care of N.C., LLC v. N.C.HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

Agency Decision Reversed. — Final agency decision of the North Carolina Department of Health and Human Services (DHHS), which upheld two settlement agreements between the DHHS Certificate of Need (CON) section and a group of medical centers and issued a CON to the group for a hospital project was reversed on appeal, because the DHHS failed to follow statutory procedure when it rejected an administrative law judge's recommendation to deny the CON applications of the group by erroneously considering new evidence, which it had no statutory authority to do. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

§ 150B-36. Final decision.

CASE NOTES

Service of Final Decision. — Plain language of G.S. 150B-36(b3) and G.S. 150B-42(a) applies to agencies, not the North Carolina Office of Administrative Hearings, and there was no requirement that the Office of Administrative Hearings serve a final decision personally or by certified mail; in any event, a day care did not deny receiving a copy of the final decision and its substantial rights were not prejudiced in any way. Lincoln v. N.C. HHS, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Dismissal Proper. — Substantial evidence in the record supported an administrative law judge's findings and its dismissal of a day care's petition for a contested case hearing where the day care filed nothing in nearly six months following the filing of the petition, despite receiving several orders from the administrative law judge to file and serve prehearing statements and other responses to motions. Lincoln v. N.C. HHS, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Memorandum of Consideration Not Final Decision. — Trial court properly held that an administrative law judge's (ALJ's) recommended decision became the final decision of the North Carolina State Personnel Commission where the Commission was evenly divided and its Memorandum of Consideration did not recite any findings of fact or conclusions of law; as the Memorandum of Consideration did not constitute a final decision, the Commission failed to make a final decision within the time set forth in G.S. 150B-44 and in order to protect the employee from unreasonable delay resulting from the Commission's failure to issue a final decision, the ALJ's recommended decision became the final decision by operation of law. Teague v. N.C. DOT, — N.C. App. —, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

Cited in Richardson v. Wilson, 404 F. Supp. 2d 887, 2005 U.S. Dist. LEXIS 36160 (W.D.N.C. 2005).

§ 150B-37. Official record.

CASE NOTES

Cited in Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005); Total Renal Care of N.C., LLC v. N.C.HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

ARTICLE 3A.

Other Administrative Hearings.

§ 150B-38. Scope; hearing required; notice; venue.

CASE NOTES

Applied in In re Lustgarten, — N.C. App. —, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006).

§ 150B-42. Final agency decision; official record.

CASE NOTES

Service of Final Decision. — Plain language of G.S. 150B-36(b3) and G.S. 150B-42(a) applies to agencies, not the North Carolina Office of Administrative Hearings, and there was no requirement that the Office of Administrative Hearings serve a final decision personally or by certified mail; in any event, a day care did not deny receiving a copy of the final decision and its substantial rights were not prejudiced in any way. Lincoln v. N.C. HHS, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

ARTICLE 4.

Judicial Review.

§ 150B-43. Right to judicial review.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Applied in Googerdy v. N.C. Agric. & Tech. State Univ., 386 F. Supp. 2d 618, 2005 U.S. Dist. LEXIS 24545 (M.D.N.C. Aug. 24, 2005).

Cited in Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618 S.E.2d 201, 2005 N.C. LEXIS 835 (2005).

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

CASE NOTES

Decision Held Unreasonably Delayed. — Trial court did not err in reversing decision by North Carolina State Personnel Commission as untimely under G.S. 150B-44, and in adopting the administrative law judge's recommended order, due to the delay beyond 60 days in the entry of the Commission's order; the Commission did not seek to extend the time limit by consent or unilaterally when it reconsidered its original order and then reissued its order. Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

Trial court properly held that an administrative law judge's (ALJ's) recommended decision became the final decision of the North Carolina State Personnel Commission where the Commission was evenly divided and its Memorandum of Consideration did not recite any findings of fact or conclusions of law; as the Memorandum of Consideration did not constitute a final decision, the Commission failed to make a final decision within the time set forth in G.S. 150B-44 and in order to protect the employee from unreasonable delay resulting from the Commission's failure to issue a final decision, the ALJ's recommended decision became the final decision by operation of law. Teague v. N.C. DOT, — N.C. App. —, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

De Novo Review Proper. — Trial court properly applied the substantial evidence test in reviewing an administrative law judge's findings of fact and conclusions of law; the trial court also properly employed a de novo review of the question of the application of G.S. 150B-44. Teague v. N.C. DOT, — N.C. App. —, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

§ 150B-45. Procedure for seeking review; waiver.

CASE NOTES

Cited in Hooper v. North Carolina, 379 F. Supp. 2d 804, 2005 U.S. Dist. LEXIS 19515 (M.D.N.C. Apr. 13, 2005); Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 618

S.E.2d 201, 2005 N.C. LEXIS 835 (2005); In re Lustgarten, — N.C. App. —, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006).

§ 150B-50. Review by superior court without jury.

CASE NOTES

Cited in In re Lustgarten, — N.C. App. —, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006).

§ 150B-51. Scope and standard of review.

CASE NOTES

I. General Consideration.
II. Exceeding Statutory Authority or Jurisdiction.
IV. "Whole Record" Test.
V. Arbitrary or Capricious Findings, Decisions, etc.

I. GENERAL CONSIDERATION.

The 2003 version of G.S. 150B-34(c), which excluded the Certificate of Need Act, G.S. 131E-175 et seq., from the requirements of G.S. 150B-36(b), (b1), (b2), (b3), and (d) and G.S. 150B-51, left the scope and standard of review applied under the 1999 version of G.S. 150B-51 undisturbed. Mooresville Hosp. Mgmt. Assocs. v. N.C. HHS, Div. of Facility Servs., 169 N.C. App. 641, 611 S.E.2d 431, 2005 N.C. App. LEXIS 796 (2005).

Unacceptable Personal Conduct by Employee. — Summary judgment for a state agency employer in an employee's petition for review of his demotion was proper where the conduct admitted by the employee constituted "unacceptable personal conduct," and the State Personnel Commission determined that its regulations and work rules did not contain any qualification or exception for the explanations asserted by the employee. Hilliard v. N.C. Dep't of Corr., 173 N.C. App. 594, 620 S.E.2d 14, 2005 N.C. App. LEXIS 2121 (2005).

Superior Court Review of Agency Decision. —

Trial court properly applied the substantial evidence test in reviewing an administrative law judge's findings of fact and conclusions of law; the trial court also properly employed a de novo review of the question of the application of G.S. 150B-44. Teague v. N.C. DOT, — N.C. App. —, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

Standards for Judicial Review. —

Final sentence of G.S. 150B-34(c) exempts certificate of need proceedings from the newly amended portions of G.S. 150B-51 and requires an appellate court to review those decisions under the previous version of G.S. 150B-51. Total Renal Care of N.C., LLC v. N.C. HHS, 171 N.C. App. 734, 615 S.E.2d 81, 2005 N.C. App. LEXIS 1354 (2005).

When De Novo Review Permissible. —

Judicial review of a North Carolina Psychology Board decision to place a psychological associate's license on probation, under G.S. 90-270.4(g), was de novo as the case concerned the Psychology Board's authority under G.S. 90-270.4(g); further, the psychological assistant, who maintained both a licensed psychological associate's practice and a licensed professional counselor's practice, could continue his licensed professional counselor's practice without interference from the Psychology Board pursuant to G.S. 90-332.1(c) as long as he remained a qualified licensed professional counselor and did not promote that practice by holding himself out as a licensed psychological associate. Trayford v. N.C. Psychology Bd., 174 N.C. App. 118, 619 S.E.2d 862, 2005 N.C. App. LEXIS 2286 (2005).

Substantial evidence in the record supported an administrative law judge's findings and its dismissal of a day care's petition for a contested case hearing where the day care filed nothing in nearly six months following the filing of the petition, despite receiving several orders from the administrative law judge to file and serve prehearing statements and other responses to motions; there was no requirement that the final decision be served personally or by certified mail, and in any event, the day care did not deny receiving a copy of the final decision and its substantial rights were not prejudiced in any way. Lincoln v. N.C. HHS, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Remand Not Required After Standard of Review Not Stated. — Where an appellate court was able to review whether or not a decision by the board of education regarding a long-term suspension should have been upheld, it was not reversible error where the trial court failed to specify the standard of review utilized. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Remand Required Following Lower Court's Application of Improper Standard of Review. — Under G.S. 150B-51(c), where an agency did not adopt an administrative law judge's decision, the reviewing court was required to review the official record, de novo, and make findings of fact and conclusions of law; a case was remanded where, in an officer disciplinary case where the state personnel commission rejected the decision of an administrative law judge who had ruled that the officer be reinstated, the trial court applied whole record test and did not make findings of fact or conclusion of law. Royal v. Dep't of Crime Control & Pub. Safety, — N.C. App. —, 622 S.E.2d 723, 2005 N.C. App. LEXIS 2751 (2005).

Applied in Davis v. Macon County Bd. of Educ., — N.C. App. —, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

Cited in In re Lustgarten, — N.C. App. —, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006).

II. EXCEEDING STATUTORY AUTHORITY OR JURISDICTION.

Order Not In Excess of Statutory Powers. —

Where a contractor had nine open burning piles within 1,000 feet from a dwelling, the North Carolina Department of Environment and Natural Resources and the Environmental Management Commission did not exceed their discretion and authority under G.S. 143-211(c), 143-215.107(a)(1), (3), and 143-215.114A(a)(1) in interpreting each pile to be one violation. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005).

IV. "WHOLE RECORD" TEST.

Trial court's failure to remand a final agency decision to the department where the department failed to provide a rationale for rejecting the administrative law judge's recommendation was reversible error since the trial court could not have made a reasonable determination as to whether the department's conclusions were supported by substantial evidence. D.B. v. Blue Ridge Ctr., 173 N.C. App. 401, 619 S.E.2d 418, 2005 N.C. App. LEXIS 2020 (2005).

Judgment Held to Meet Requirements of Section. —

Certified public accounting firm failed to show that the North Carolina State Board of Certified Public Accountant Examiners erred by denying the accounting firm's proposed name change as the Board had authority under G.S. 93-12 to regulate name changes, and the Board's decision that the proposed name change had a capacity or tendency to deceive, in violation of N.C. Admin. Code. Tit. 21, r. 8N.0307, was supported by substantial evidence under the whole record test. McGladrey & Pullen, LLP v. N.C. State Bd. of CPA Exam'rs, 171 N.C. App. 610, 615 S.E.2d 339, 2005 N.C. App. LEXIS 1274 (2005), cert. denied, notice of appeal dismissed, 360 N.C. 65, 621 S.E.2d 627 (2005).

Substantial evidence on the whole record supported the Environmental Management Commission's finding that a contractor had nine open burning piles that were not 1,000 feet from a dwelling; the contractor presented no evidence showing that the open burning piles were located on the same property as the nearby residence. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005).

Substantial evidence existed to support findings by administrative law judge and trial court that employee who was not promoted by a state agency met her burden to show that the agency intentionally discriminated against her, where the employee presented evidence from which the finder of fact could conclude she was more qualified than the successful applicant based on her education, seniority, overall record with the agency, outstanding grades on performance reports, and higher scores on the interviewing and screening tests. Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

Court May Not Replace Agency's Judgment with Its Own. —

Although the trial court impermissibly replaced the administrative law judge's judgment of the credibility of two witnesses with its own, this error was not prejudicial, as this finding had no bearing on the ultimate issue in the case. N.C. Dep't of Crime Control & Pub. Safety v. Greene, 172 N.C. App. 530, 616 S.E.2d 594, 2005 N.C. App. LEXIS 1805 (2005).

Agency's Judgment Must Be Affirmed If Supported by Competent Evidence. —

North Carolina State Banking Commission's decision denying the applications for licensure for two mortgage loan officers was upheld on appeal and the lower court did not err by relying upon a previously entered default judgment against the two since the applicants' prior mortgage company had been awarded that default judgment for engaging in a pattern of business operations regarding false and misleading representations, and they were not exempt from the qualifications of G.S. 53-243.05 pursuant to a grandfather provision, because that grandfather provision only exempted already licensed persons from taking the three-year training requirement. State ex rel. Banking Comm'n Against Weiss v. N.C. Comm'r of Banks, 174 N.C. App. 78, 620 S.E.2d 540, 2005 N.C. App. LEXIS 2282 (2005).

Because evidence before the State Personnel Commission (SPC) showed that, based on her interview and writing sample scores, an employee ranked lowest out of all of the applicants for a position, and two of the panel members testified that based on these rankings, they considered the chosen candidate to be the best applicant for that position, the trial court did not err when it failed to limit its application of the whole-record test in determining whether the decision of the SPC was supported by substantial competent evidence. N.C. Dep't of Crime Control & Pub. Safety v. Greene, 172 N.C. App. 530, 616 S.E.2d 594, 2005 N.C. App. LEXIS 1805 (2005).

Substantial evidence supported school board's decision to suspend a student for disruptive behavior, hazing, and disorderly conduct where the student pulled a classmate's pants down in front of other people, exposing her buttocks; the principal testified that having the student present while others talked about the incident could have created a disruption to the learning environment. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Substantial Evidence Supported Administrative Law Judge's Recommended Decision. — Substantial evidence supported an administrative law judge's (ALJ) ruling that the North Carolina Department of Transportation (DOT) had just cause to dismiss an employee for unacceptable personal conduct where he knowingly violated the DOT's Statement of Understanding and Internet Policy as: (1) the employee's denial of knowledge of the Statement of Understanding was not credible, (2) the employee's claim that he was unaware that he had to obtain his supervisor's approval before installing software on his work computer was not believed by the ALJ, (3) the employee admitted not having permission to install software on his computer, and (4) the unauthorized installation of software was inconsistent with the DOT's objective to ensure that its files and computer network system were properly protected. Teague v. N.C. DOT, — N.C. App. —, 628 S.E.2d 395, 2006 N.C. App. LEXIS 863 (2006).

V. ARBITRARY OR CAPRICIOUS FINDINGS, DECISIONS, ETC.

School Suspension Held Not Arbitrary or Capricious. — Even though a student failed to preserve an equal protection challenge to a suspension by failing to assign error or present authority, the argument was meritless at any rate under arbitrary and capricious review because there was a gender-neutral reason for a longer suspension; prior incidents of "shanking" at a high school did not result in the exposure of buttocks or genitalia. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Evidence Held Sufficient. —

Based on employee's qualifications found by both an administrative law judge and the trial court, substantial evidence existed showing that the employee was objectively better qualified for the position to which another worker was promoted. Therefore, the administrative law judge and the trial court properly found as fact and concluded as a matter of law that the employee was more qualified for the position than the other worker to support her claim of race and gender discrimination. Gordon v. N.C. Dep't of Corr., 173 N.C. App. 22, 618 S.E.2d 280, 2005 N.C. App. LEXIS 1918 (2005).

§ 150B-52. Appeal; stay of court's decision.

CASE NOTES

Substantial Evidence Found. —

Substantial evidence in the record supported an administrative law judge's findings and its dismissal of a day care's petition for a contested case hearing where the day care filed nothing in nearly six months following the filing of the petition, despite receiving several orders from the administrative law judge to file and serve prehearing statements and other responses to motions. Lincoln v. N.C. HHS, 172 N.C. App. 567, 616 S.E.2d 622, 2005 N.C. App. LEXIS 1804 (2005).

Demotion Upheld. — Summary judgment for a state agency employer in an employee's petition for review of his demotion was proper where the conduct admitted by the employee constituted "unacceptable personal conduct," and the State Personnel Commission determined that its regulations and work rules did not contain any qualification or exception for the explanations asserted by the employee. Hilliard v. N.C. Dep't of Corr., 173 N.C. App. 594, 620 S.E.2d 14, 2005 N.C. App. LEXIS 2121 (2005).

Applied in Chatmon v. N.C. HHS, — N.C. App. —, 622 S.E.2d 684, 2005 N.C. App. LEXIS 2711 (2005).

Cited in In re Lustgarten, — N.C. App. —, 629 S.E.2d 886, 2006 N.C. App. LEXIS 1200 (2006).

Chapter 153A.

Counties.

Article 2.

Corporate Powers.

Sec.
153A-15.1. Agreement to make payment in lieu of future ad valorem taxes required before wetlands acquisition by a unit of local government.

Article 6.

Delegation and Exercise of the General Police Power.

153A-129. Firearms.
153A-137. [Repealed.]

Article 7.

Taxation.

153A-154. [Repealed.]
153A-155. Uniform provisions for room occupancy taxes.

Article 10.

Law Enforcement and Confinement Facilities.

Part 1. Law Enforcement.

153A-212.2. Neighborhood crime watch programs.

Article 18.

Planning and Regulation of Development.

Part 3. Zoning.

Sec.
153A-340. Grant of power.

Part 5. Community Development.

153A-376. Community development programs and activities.

Article 19.

Regional Planning Commissions.

153A-395. Powers and duties.

Article 23.

Miscellaneous Provisions.

153A-453. Quarterly reports by Mental Health, Developmental Disabilities, and Substance Abuse Services area authority or county program.
153A-454. Stormwater control.
153A-455 through 153A-470. [Reserved.]

ARTICLE 1.

Definitions and Statutory Construction.

§ 153A-4. Broad construction.

CASE NOTES

Applicable Only Where Ambiguity Exists. — Only if there is an ambiguity in a statute found in N.C. Gen. Stat. ch. 153A should G.S. 153A-4 be part of the courts' interpretative process. Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

ARTICLE 2.

Corporate Powers.

§ 153A-15. Consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county.

CASE NOTES

Applicability. — Summary judgment was properly entered in a declaratory action regarding the applicability of G.S. 153A-15(b) because a condemnation action by a city in order to facilitate the construction of a water supply and distribution facility did not require any approval since the city and the land were located in the same county; moreover, the evidence showed that the real and substantial benefits of the condemnation accrued to the city in question, and not other parties in the case that were located in different counties. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 153A-15.1. Agreement to make payment in lieu of future ad valorem taxes required before wetlands acquisition by a unit of local government.

(a) Condemnation. — Notwithstanding the provisions of G.S. 153A-15, Chapter 40A of the General Statutes, or any other general law or local act conferring the power of eminent domain, before a final judgment may be entered or a final condemnation resolution adopted in an action of condemnation initiated by a unit of local government whose property is exempt from tax under Section 2(3) of Article V of the North Carolina Constitution, whereby the condemnor seeks to acquire land for the purpose of wetlands mitigation, the condemnor shall agree in writing to pay to the county where the land is located a sum equal to the estimated amount of ad valorem taxes that would have accrued to the county for the next 20 years had the land not been acquired by the condemnor.

(b) Purchase. — Notwithstanding the provisions of G.S. 130A-55, 153A-15, 153A-158, 160A-240.1, or any other general law or local act conferring the power to acquire real property, before any unit of local government whose property is exempt from tax under Section 2(3) of Article V of the North Carolina Constitution purchases any land for the purpose of wetlands mitigation, the unit shall agree in writing to pay to the county where the land is located a sum equal to the estimated amount of ad valorem taxes that would have accrued to the county for the next 20 years had the land not been acquired by the acquiring unit.

(c) Definition. — For purposes of this section, the "estimated amount of ad valorem taxes that would have accrued for the next 20 years" means the total assessed value of the acquired land excluded from the county's tax base multiplied by the tax rate set by the county board of commissioners in its most recent budget ordinance adopted under Chapter 159 of the General Statutes, and then multiplied by 20.

(d) Exception. — This section does not apply to any condemnation or acquisition of land by a city or special district if the land to be condemned or acquired is within the corporate limits of that city or special district or within the county where the city or special district is located.

(e) Application. — This section applies only to land acquired in counties designated as a development tier one area under G.S. 143B-437.08. (2004-188, s. 1; 2006-252, s. 2.17.)

Effect of Amendments. — Session Laws 2006-252, s. 2.17, effective January 1, 2007, substituted "a development tier one area under G.S. 143B-437.08" for "an enterprise tier one or enterprise tier two area under G.S. 105-129.3" in subsection (e).

ARTICLE 5.

Administration.

Part 4. Personnel.

§ 153A-98. Privacy of employee personnel records.

CASE NOTES

Cited in Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-102. Commissioners to fix fees.

CASE NOTES

Statute Does Not Authorize School Impact Fees. — G.S. 153A-102 did not authorize a county to impose a "school impact fee" upon new residential construction; its plain language limited the power to fix only those fees charged by county officers and employees for performing services or duties permitted or required by law, and under G.S. 115C-408(b), it was the duty of a county itself, not its officers or employees, to provide adequate school facilities. Furthermore, the statute's textual limitations on the power to charge fees indicated that the services were routine, document-oriented tasks. Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

ARTICLE 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

CASE NOTES

Statute Did Not Authorize "School Impact Fees." — G.S. 153A-121 and 153A-340 did not authorize a county to impose "school impact fees" on new residential construction. They did not allow a county to charge a fee for providing its own governmental services, such as school construction, to the public. Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

Cited in Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156, 2005 N.C. App. LEXIS 906 (2005).

§ 153A-129. Firearms.

A county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under Chapter 14, Article 36A. (1973, c. 822, s. 1; 2006-264, s. 16.)

Effect of Amendments. — Session Laws 2006-264, s. 16, effective August 27, 2006, substituted "Subchapter IV" for "Subchapter III" in the middle of the first sentence.

§ 153A-137: Repealed by Session Laws 2006-151, s. 10, effective January 1, 2007.

Article 7.

Taxation.

§ 153A-154: Repealed by Session Laws 2006-151, s. 11, effective January 1, 2007.

§ 153A-155. Uniform provisions for room occupancy taxes.

(a) Scope. — This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. — A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. — Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. — The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. — A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. — A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. — The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Martin, Montgomery, Nash, New Hanover, New Hanover County District U, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett County. (1997-102, s. 3; 1997-255, s. 2; 1997-342, s. 2; 1997-364, s. 3; 1997-410, s. 6; 1998-14, s. 2; 1999-155, s. 2; 1999-205, s. 2; 1999-286, s. 2; 2000-103, s. 5; 2001-162, s. 2; 2001-305, s. 2; 2001-321, s. 3; 2001-381, s. 10; 2001-434, s. 1; 2001-439, s. 18.2; 2001-468, s. 3; 2001-480, s. 14; 2001-484, s. 2; 2002-138, s. 5; 2004-106, s. 2; 2004-120, s. 3; 2004-170, ss. 36(a), 42(a); 2004-199, s. 60(a); 2005-16, s. 2; 2005-46, s. 1.2; 2005-53, s. 2; 2005-197, s. 6; 2005-233, s. 6.1; 2006-120, s. 8.1; 2006-127, s. 2; 2006-129, s. 2; 2006-162, s. 20(a); 2006-167, s. 7(e); 2006-264, s. 81(a).)

Editor's Note. —

Session Laws 2006-120, s. 10.4, provides: "If House Bill 770, 2005 Regular Session becomes law, then PART VII of this act is repealed and Section 8.1 of this act is repealed." House Bill 770 did not pass.

Session Laws 2006-128, s. 6, purported to amend G.S. 153A-215, which does not exist. The apparent intent was to amend subsection (g) of this section by adding "and the Ocracoke Township Taxing District" at the end. The amendment has not been given effect.

Effect of Amendments. —

Session Laws 2005-16, s. 2, as amended by Session Laws 2006-264, s. 81(a), effective July 1, 2005, inserted "Pasquotank" in subsection (g).

Session Laws 2006-120, s. 8.1, effective July 17, 2006, inserted "Clay," near the beginning of subsection (g).

Session Laws 2006-127, s. 2, effective July 19, 2006, inserted "Martin," in the middle of subsection (g).

Session Laws 2006-129, s. 2, effective July 19, 2006, inserted "Chowan," in the middle of subsection (g).

Session Laws 2006-162, s. 20(a), effective July 24, 2006, substituted "20th day" for "15th day" near the middle of the second sentence in subsection (d).

Session Laws 2006-167, s. 7(e), effective September 1, 2006, and applicable to room occupancy and tourism development taxes levied on and after that date, inserted "New Hanover County District U," in the middle of subsection (g).

Article 8.

County Property.

Part 3. Disposition of County Property.

§ 153A-178. Disposition of county property for a State psychiatric hospital.

Editor's Note. —

Session Laws 2003-314, ss. 3.4(a), (a1) and (b), as amended by Session Laws 2004-124, s. 10.26A(a), as amended by 2005-7, s. 1, and as amended by Session Laws 2006-248, s. 52, provides: "(a) Dorothea Dix Hospital Property Study Commission. — If any of the State-owned real property encompassing the Dorothea Dix Hospital campus is no longer needed by Dorothea Dix Hospital and is not transferred to another State agency or agencies before the sale of any or all of the property to a nongovernmental entity, options for this sale shall be considered by the Dorothea Dix Hospital Property Study Commission. The Commission shall make recommendations on the options for sale of the property to the Joint Legislative Commission on Governmental Operations before any sale of any or all parts of the property.

"(a1) The State Property Office, in consultation with the City of Raleigh, shall develop a Master Plan for the Dorothea Dix Campus. The State Property Office shall hire a consultant to assist with the development of the Master Plan. The State Property Office shall examine, among other things, operations for land conservation, mixed-use development, and anticipated State office space needs. The Master Plan shall reflect both State needs and local considerations. The State Property Office shall submit the Master Plan to the Dorothea Dix Property Study Commission no later than September 1, 2005. The Commission shall review the Master Plan and shall make recommendations to the 2006 Session of the 2005 General Assembly.

"In order to enhance communication and feedback regarding the planning process, an oversight committee shall be established to oversee the development of the Master Plan. The oversight committee shall consist of five members: three shall be appointed by the Co-chairs of the Dorothea Dix Property Study Commission; one shall be appointed by the Raleigh City Council; and one shall be appointed by the Wake County Board of Commissioners. The oversight committee shall terminate upon the submission of the Master Plan to the Dorothea Dix Property Study Commission.

"(b) Creation and Membership. — The Dorothea Dix Hospital Property Study Commission is created. The Commission shall consist of 11 members, five appointed by the President Pro Tempore of the Senate and five appointed by the Speaker of the House of Representatives. The Secretary of Health and Human Services shall serve as an ex officio member of the Commission."

Session Laws 2006-248, s. 1, provides: "This act shall be known as 'The Studies Act of 2006.'"

Session Laws 2006-248, s. 21, provides: "The Dorothea Dix Hospital Property Study Commission shall study and make recommendations regarding the following:

"(1) Balancing complementary public uses of open space, the adaptive re-use of existing facilities, and continued support for mental health services.

"(2) The financial feasibility of the various uses.

"(3) An assessment of financial mechanisms for the implementation and maintenance of the various uses.

"(4) Administrative or governance structures to implement the uses. The Commission shall report its findings and recommendations to the 2007 General Assembly by January 31, 2007."

Article 9.

Special Assessments.

§ 153A-185. Authority to make special assessments.

CASE NOTES

Beach Erosion. — County complied with G.S. 153A-185 assessment against benefitted properties for an inlet relocation because the project was designed to counter beach erosion, which was a permitted reason for such an assessment. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

§ 153A-186. Bases for making assessments.

CASE NOTES

Consideration of Third Parties. — County's assessment for a inlet relocation was not set aside under G.S. 153A-186(d) because a board did not abrogate its responsibility when it took outside suggestions from third parties. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

Different Methods Permissible. — G.S. 153-186 specifically anticipates that a project may require different methods for different geographical areas involved in a project and that a combination of methods may be used; therefore, an owner's challenge to an assessment imposed for inlet relocation based on this reason was properly denied. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

What Challenge is Permissible. — Plain language of G.S. 153A-186(d) and G.S. 153A-197 suggests that, while a landowner may appeal a special assessment, he may not challenge the board of commissioners' choice of which method or methods provided for in the statute should be used in calculating the assessment; nothing, however, in G.S. 153A-186(d) precludes a property owner from arguing that the special assessment was for a purpose not authorized by statute, that the board of commissioners improperly abrogated its responsibilities under G.S. 153A-186(d) in choosing a method of calculation, or that the method chosen was not one permitted by the statute. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

§ 153A-197. Appeal to the General Court of Justice.

CASE NOTES

Scope of Appeal. — Plain language of G.S. 153A-186(d) and G.S. 153A-197 suggests that, while a landowner may appeal a special assessment, he may not challenge the board of commissioners' choice of which method or methods provided for in the statute should be used in calculating the assessment; nothing, however, in G.S. 153A-186(d) precludes a property owner from arguing that the special assessment was for a purpose not authorized by statute, that the board of commissioners improperly abrogated its responsibilities under G.S. 153A-186(d) in choosing a method of calculation, or that the method chosen was not one permitted by the statute. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

Article 10.

Law Enforcement and Confinement Facilities.

Part 1. Law Enforcement.

§ 153A-212.2. Neighborhood crime watch programs.

A county may establish neighborhood crime watch programs within the county to encourage residents and business owners to promote citizen involvement in securing homes, businesses, and personal property against criminal activity and to report suspicious activities to law enforcement officials. (2006-181, s. 1.)

Editor's Note. — Session Laws 2006-181, s. 4, made this section effective August 1, 2006.

Part 2. Local Confinement Facilities.

§ 153A-217. Definitions.

CASE NOTES

Definition of "Local Confinement Facility" Applicable to G.S. 90-95(e)(9). — Temporary holding cell was considered to be a local confinement facility for purposes of a conviction for possession of a controlled substance on the premises of a local confinement facility under G.S. 90-95(e)(9). State v. Dent, — N.C. App. —, 621 S.E.2d 274, 2005 N.C. App. LEXIS 2491 (2005).

§ 153A-220. Jail and detention services.

CASE NOTES

Negligence Claim Against State Jail Inspection Agency Not Barred By Public Duty Doctrine. — Public duty doctrine did not apply to bar a negligence suit brought by multiple plaintiffs against the North Carolina Department of Health and Human Services (DHHS), after four inmates were killed and one inmate was seriously injured as a result of a jailhouse fire. Plaintiffs' complaint, which alleged that the inspector for DHHS was negligent in his inspection of the jail and that DHHS failed to properly train the inspector to perform his duties as an inspector of county jails, was not barred under the public duty doctrine because DHHS' duty to inspect was for the purpose of protecting the inmates and not for protection of the public generally or, even if the public duty doctrine did apply, plaintiffs fell within the special relationship exception to that doctrine of custodian/prisoner, therefore, the motion to dismiss filed by DHHS was properly denied. Multiple Claimants v. N.C. HHS, Div. of Facility and Detention Servs., — N.C. App. —, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006).

§ 153A-221. Minimum standards.

CASE NOTES

Negligence Claim Against State Jail Inspection Agency Not Barred By Public Duty Doctrine. — Public duty doctrine did not apply to bar a negligence suit brought by multiple plaintiffs against the North Carolina Department of Health and Human Services (DHHS), after four inmates were killed and one inmate was seriously injured as a result of a jailhouse fire. Plaintiffs' complaint, which alleged that the inspector for DHHS was negligent in his inspection of the jail and that DHHS failed to properly train the inspector to perform his duties as an inspector of county jails, was not barred under the public duty doctrine because DHHS' duty to inspect was for the purpose of protecting the inmates and not for protection of the public generally or, even if the public duty doctrine did apply, plaintiffs fell within the special relationship exception to that doctrine of custodian/prisoner, therefore, the motion to dismiss filed by DHHS was properly denied. Multiple Claimants v. N.C. HHS, Div. of Facility and Detention Servs., — N.C. App. —, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006).

§ 153A-222. Inspections of local confinement facilities.

CASE NOTES

Negligence Claim Against State Jail Inspection Agency Not Barred By Public Duty Doctrine. — Public duty doctrine did not apply to bar a negligence suit brought by multiple plaintiffs against the North Carolina Department of Health and Human Services (DHHS), after four inmates were killed and one inmate was seriously injured as a result of a jailhouse fire. Plaintiffs' complaint, which alleged that the inspector for DHHS was negligent in his inspection of the jail and that DHHS failed to properly train the inspector to perform his duties as an inspector of county jails, was not barred under the public duty doctrine because DHHS' duty to inspect was for the purpose of protecting the inmates and not for protection of the public generally or, even if the public duty doctrine did apply, plaintiffs fell within the special relationship exception to that doctrine of custodian/prisoner, therefore, the motion to dismiss filed by DHHS was properly denied. Multiple Claimants v. N.C. HHS, Div. of Facility and Detention Servs., — N.C. App. —, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006).

§ 153A-223. Enforcement of minimum standards.

CASE NOTES

Negligence Claim Against State Jail Inspection Agency Not Barred By Public Duty Doctrine. — Public duty doctrine did not apply to bar a negligence suit brought by multiple plaintiffs against the North Carolina Department of Health and Human Services (DHHS), after four inmates were killed and one inmate was seriously injured as a result of a jailhouse fire. Plaintiffs' complaint, which alleged that the inspector for DHHS was negligent in his inspection of the jail and that DHHS failed to properly train the inspector to perform his duties as an inspector of county jails, was not barred under the public duty doctrine because DHHS' duty to inspect was for the purpose of protecting the inmates and not for protection of the public generally or, even if the public duty doctrine did apply, plaintiffs fell within the special relationship exception to that doctrine of custodian/prisoner, therefore, the motion to dismiss filed by DHHS was properly denied. Multiple Claimants v. N.C. HHS, Div. of Facility and Detention Servs., — N.C. App. —, 626 S.E.2d 666, 2006 N.C. App. LEXIS 530 (2006).

Part 3. Satellite Jail/Work Release Units.

§ 153A-230.1. Definitions.

CASE NOTES

Cited in State v. Dent, — N.C. App. —, 621 S.E.2d 274, 2005 N.C. App. LEXIS 2491 (2005).

ARTICLE 12.

Roads and Bridges.

§ 153A-241. Closing public roads or easements.

CASE NOTES

Burden of proof. — Pursuant to a hearing statutorily mandated by G.S. 153A-241, the burden of proof remained on a property owners association to show that a county board correctly found that closing roads in a subdivision was not contrary to the public interest, because the association shouldered the initial burden when the board first convened to determine the issue. Ocean Hill Joint Venture v. Currituck County Bd. of Comm'rs, — N.C. App. —, 630 S.E.2d 714, 2006 N.C. App. LEXIS 1309 (2006).

ARTICLE 18.

Planning and Regulation of Development.

Part 2. Subdivision Regulation.

§ 153A-335. "Subdivision" defined.

Editor's Note. — Session Laws 1979-313, ss. 2 and 3, which provided for a local modification to this section applicable to Rutherford County, are repealed by Session Laws 2006-189, s. 1, effective August 3, 2006.

Part 3. Zoning.

§ 153A-340. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b)(1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products as defined in G.S. 106-581.1 having a domestic or foreign market. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance.

(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

(f) Repealed by Session Laws 2005-426, s. 5(b), effective January 1, 2006.

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) As provided in this subsection, counties may adopt temporary moratoria on any county development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the board of commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the county prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the county and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the county in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the county shall have the burden of showing compliance with the procedural requirements of this subsection. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4; 1973, c. 822, s. 1; 1981, c. 891, s. 6; 1983, c. 441; 1985, c. 442, s. 2; 1987, c. 747, s. 12; 1991, c. 69, s. 1; 1997-458, s. 2.1; 2005-390, s. 6; 2005-426, s. 5(b); 2006-259, s. 26(a).)

Effect of Amendments. — Session Laws 2006-259, s. 26(a), effective January 1, 2007, inserted "as defined in G.S. 106-581.1" near the end of the first sentence of subdivision (b)(2).

CASE NOTES

Statute Did Not Authorize "School Impact Fees." — G.S. 153A-121 and 153A-340 did not authorize a county to impose "school impact fees" on new residential construction. They did not allow a county to charge a fee for providing its own governmental services, such as school construction, to the public. Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

§ 153A-341. Purposes in view.

CASE NOTES

Cited in Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

§ 153A-345. Board of adjustment.

CASE NOTES

Board's Action Upheld. — Superior court, pursuant to G.S. 153A-345(e), properly affirmed a county board of adjustment's approval of a special use permit to allow a park owner to build and operate a go-cart track because (1) the board properly placed the burden of proof on the park owner to prove that the health and safety requirements of the county's special use permit ordinance were met; and (2) the findings of fact and conclusions of law were supported by competent, material, and substantial evidence in the record as a whole, based on the testimony of a civil engineer as to sound levels and the sound test results from an engineering firm. Harding v. Bd. of Adjustment, 170 N.C. App. 392, 612 S.E.2d 431, 2005 N.C. App. LEXIS 994 (2005).

Part 4. Building Inspection.

§ 153A-357. Permits.

Local Modification. — Alamance: 1993, c. 381, s. 1; Cumberland: 1995 (Reg. Sess., 1996), c. 732, s. 1; Davie: 1991, c. 194; 2005-433, s. 3, as amended by 2006-150, s. 2; Greene: 2005-433, s. 3; Iredell: 2005-433, s. 3; Lenoir: 2005-433, s. 3; Lincoln: 2005-433, s. 3, as amended by 2006-150, s. 2; Scotland: 1995, c. 124, s. 1; Wayne: 2005-433, s. 3; Yadkin: 2005-433, s. 3; town of Sunset Beach: 1997-63.

Part 5. Community Development.

§ 153A-376. Community development programs and activities.

(a) Any county is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a county may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any board of county commissioners may exercise directly those powers granted by law to county redevelopment commissions and those powers granted by law to county housing authorities. Any board of county commissioners desiring to do so may delegate to redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any board of county commissioners and any municipal governing body may by agreement undertake or carry out for each other any specified community development activities. Any board of county commissioners may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any board of county commissioners any specified community development activities.

(c) Any board of county commissioners undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any board of county commissioners proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such county.

(e) No state or local taxes shall be appropriated or expended by a county pursuant to this section for any purpose not expressly authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as therein provided.

(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient "economically distressed counties", as defined in G.S. 143B-437.01 for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration.

(g) Any county may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any county that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. A county may implement the receipt, dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a portion of those funds to a third party in accordance with applicable laws governing the CDBG program.

Any county that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes. (1975, c. 435, s. 2; c. 689, s. 2; 1987 (Reg. Sess., 1988), c. 992, s. 1; 1995, c. 310, s. 2; 1995 (Reg. Sess., 1996), c. 575, s. 2; 1996, 2nd Ex. Sess., c. 13, s. 3.8; 2006-259, s. 27(a).)

Effect of Amendments. — Session Laws 2006-259, s. 27(a), effective August 23, 2006, substituted "G.S. 143B-437.01" for "G.S. 143B-437A" twice in the first and last sentences of subsection (f).

Article 19.

Regional Planning Commissions.

§ 153A-395. Powers and duties.

A regional planning commission may:

(1) Apply for, accept, receive, and disburse funds, grants, and services made available to it by the State of North Carolina or any agency thereof, the federal government or any agency thereof, any unit of local government or any agency thereof, or any private or civic agency;
(2) Employ personnel;
(3) Contract with consultants;
(4) Contract for services with the State of North Carolina, any other state, the United States, or any agency of those governments;
(5) Study and inventory regional goals, resources, and problems;
(6) Prepare and amend regional development plans, which may include recommendations for land use within the region, recommendations concerning the need for and general location of public works of regional concern, recommendations for economic development of the region, and any other relevant matters;
(7) Cooperate with and provide assistance to federal, State, other regional, and local planning activities within the region;
(8) Encourage local efforts toward economic development;
(9) Make recommendations for review and action to its member governments and other public agencies that perform functions within the region;
(9a) For the purpose of meeting its office space and program needs, acquire real property by purchase, gift, or otherwise, and improve that property. It may pledge real property as security for an indebtedness used to finance acquisition of that property or for improvements to that property, subject to approval by the Local Government Commission as required under G.S. 159-153. It may not exercise the power of eminent domain in exercising the powers granted by this subdivision.
(10) Exercise any other power necessary to the discharge of its duties. (1961, c. 722, s. 3; 1973, c. 822, s. 1; 2006-211, s. 2.)

Effect of Amendments. — Session Laws 2006-211, s. 2, effective August 8, 2006, added subdivision (9a).

Article 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

CASE NOTES

Cited in Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

§ 153A-438. Beach erosion control and flood and hurricane protection works.

CASE NOTES

Cited in Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

§ 153A-453. Quarterly reports by Mental Health, Developmental Disabilities, and Substance Abuse Services area authority or county program.

Quarterly reports by the area director and finance officer of Mental Health, Developmental Disabilities, and Substance Abuse Services area authorities or county programs shall be submitted to the county finance officer as provided under G.S. 122C-117(c). (2006-142, s. 3(b).)

Editor's Note. — Session Laws 2006-142, s. 8, made this section effective July 19, 2006.

§ 153A-454. Stormwater control.

(a) A county may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A county may adopt a stormwater management ordinance pursuant to this Chapter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a county stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A county may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the county. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a county may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A county may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A county that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance to establish the stormwater control program necessary for the county to comply with the permit. A county may adopt an ordinance that bans illicit discharges. A county may adopt an ordinance that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project. (2006-246, s. 17(a).)

Cross References. — For requirements necessitated by temporary implementation of federal Phase II Stormwater Management and the Stormwater Management Rules, see notes under G.S. 143-214.7.

Editor's Note. — Session Laws 2006-246, s.

20, made this section retroactively effective July 1, 2006.

§§ 153A-455 through 153A-470: Reserved for future codification purposes.

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

Sec.
157-29. Rentals; tenant selections; and summary ejectments.

ARTICLE 1.

Housing Authorities Law.

§ 157-29. Rentals; tenant selections; and summary ejectments.

(a) It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the cost of dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations. No housing authority may construct or operate its housing projects so as to provide revenues for other activities of the city.

(b) In the operation or management of housing projects, portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income that is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(3) Repealed by Session Laws 2006-219, s. 1, effective August 8, 2006.

(3a) It shall comply with the following targeting requirements:

a. Not less than forty percent (40%) of the families admitted to its public housing program from its waiting list in its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income. For purposes of this section, this shall be known as the "basic targeting requirement".

b. To the extent provided in sub-subdivisions c. and d. of this subdivision, the admission of extremely low-income families to its Section 8 voucher program during the same fiscal year shall be credited against the basic targeting requirement. For purposes of this section, "Section 8" refers to Section 8 of the U.S. Housing Act of 1937 as amended.

c. If admissions of extremely low-income families to its Section 8 voucher program during its fiscal year exceed the seventy-five percent (75%) minimum targeting requirement for its Section 8 voucher program, the excess shall be credited against its basic targeting requirement for the same fiscal year.

d. The fiscal year credit for Section 8 voucher program admissions that exceeded the minimum Section 8 voucher program targeting requirement shall not exceed the lower of any of the following:

1. Ten percent (10%) of its waiting list admissions during its fiscal year.
2. Ten percent (10%) of waiting list admissions to its Section 8 tenant-based assistance program during its fiscal year.
3. The number of qualifying low-income families who, during the fiscal year, commence occupancy of its public housing units that are located in census tracts with a poverty rate of thirty percent (30%) or more. For purposes of this sub-sub-subdivision, qualifying low-income family means a low-income family other than an extremely low-income family.

(4) Repealed by Session Laws 2006-219, s. 1, effective August 8, 2006.

(4a) Its targeting requirement for tenant-based assistance shall ensure that not less than seventy-five percent (75%) of the families admitted to its tenant-based voucher program from its waiting list during its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income.

(c) An authority may terminate or refuse to renew a rental agreement for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulation, whether or not such failure was the fault of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. Section 966.4(f) or other applicable provisions of federal law as they may be amended from time to time, or (iii) other good cause. Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement.

(d) The receipt or acceptance of rent by an authority, with or without knowledge of a prior default or failure by the tenant under a rental agreement, shall not constitute a waiver of that default or failure unless (i) the authority expressly agrees to such waiver in writing, or (ii) within 120 days after obtaining knowledge of the default or failure, the authority fails either to notify the tenant that a violation of the rental agreement has occurred or to exercise one of the authority's remedies for such violation.

(e) In any summary ejectment action wherein a housing authority alleges that a tenant's lease has been terminated because the tenant, a household member, or a guest has engaged in a criminal activity that threatens the health and safety of others or the peaceful enjoyment of the premises by others, or has engaged in activity involving illegal drugs, as defined in 24 C.F.R. § 966.4, the housing authority may bring an action under Article 7 of Chapter 42 of the General Statutes. (1939, c. 150; 1985, c. 741, s. 2; 1987, c. 464, s. 5; 1989, c. 272; 1995, c. 520, s. 1; 1997-473, s. 1; 2005-423, s. 8; 2006-219, s. 1; 2006-259, s. 39.)

Effect of Amendments. —

Session Laws 2006-219, s. 1, effective August 8, 2006, repealed subdivision (b)(3), which read: "In the administration of its waiting lists, it shall adopt a preference for households with incomes of less than thirty percent (30%) of the area median income."; added subdivision (b)(3a); repealed subdivision (b)(4), which read: "An authority shall take applications on a continuous basis from persons meeting the preference listed in this section and shall not close the application process to these persons. Any additional local preferences shall not take priority over the preference in this section."; and added subdivision (b)(4a).

Session Laws 2006-259, s. 39, effective August 23, 2006, in subdivision (b)(3a)b., substituted "sub-subdivisions c. and d. of this subdivision" for "subdivision (4a) of this subsection"; in subdivision (b)(3a)c., substituted "exceed the" for "exceeds" and deleted "of the" preceding "minimum"; in subdivision (b)(3a)d., inserted "any of" near the end of the introductory paragraph; and made minor punctuation and stylistic changes throughout subdivision (b)(3a).

Chapter 158.

Local Development.

Article 1.

Local Development Act of 1925.

Sec.
158-7.3. Development financing.

Article 2.

Economic Development Commissions.

158-8.5. Annual reporting requirement.
158-8.6. Uniform standards.
Sec.
158-8.7. Use of State funds.
158-8.8. Orientation for board members.

Article 4.

North Carolina's Eastern Region.

158-33. Creation of North Carolina's Eastern Region.

ARTICLE 1.

Local Development Act of 1925.

§ 158-7.3. Development financing.

(a) Definitions. — The following definitions apply in this section:

(1) Development project. — A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in a development tier one area, as defined in G.S. 143B-437.08 and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

(2) Publish. — Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.

(3) Unit or unit of local government. — A county, city, town, or incorporated village.

(b) Authorization. — A unit of local government may finance public improvements that are part of a development project with the proceeds of project development financing debt instruments, issued pursuant to Article 6 of Chapter 159 of the General Statutes, together with any other revenues that are available to the unit. Before it receives the approval of the Local Government Commission for issuance of project development financing debt instruments, the unit's governing body must define a development financing district and adopt a development financing plan for the district. The county may act jointly with a city to finance a project, define a development financing district that is within the city, and adopt a development financing plan for the district.

(c) Development Financing District. — A development financing district created pursuant to this section must be comprised of property that is one or more of the following:

(1) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth.
(2) Appropriate for rehabilitation or conservation activities.
(3) Appropriate for the economic development of the community.

The total land area within development financing districts in a unit, including development financing districts created pursuant to G.S. 160A-515.1, may not exceed five percent (5%) of the total land area of the unit. For the purposes of this section, land in a district created by a county that subsequently becomes part of a city, town, or incorporated village does not count against the five-percent (5%) limit for the city, town, or incorporated village unless the city, town, or incorporated village and the county have entered into an agreement pursuant to G.S. 159-107(e). A county may not include in a district created pursuant to this section any land that, at the time the district is created, is inside a city, town, or incorporated village.

(d) Development Financing Plan. — The development financing plan must include all of the following:

(1) A description of the boundaries of the development financing district.
(2) A description of the proposed development of the district, both public and private.
(3) The costs of the proposed public activities.
(4) The sources and amounts of funds to pay for the proposed public activities.
(5) The base valuation of the development financing district.
(6) The projected incremental valuation of the development financing district.
(7) The estimated duration of the development financing district.
(8) A description of how the proposed development of the district, both public and private, will benefit the residents and business owners of the district in terms of jobs, affordable housing, or services.
(9) A description of the appropriate ameliorative activities which will be undertaken if the proposed projects have a negative impact on residents or business owners of the district in terms of jobs, affordable housing, services, or displacement.
(10) A requirement that the initial users of any new manufacturing facilities that will be located in the district and that are included in the plan will comply with the wage requirements referred to in subsection (e) of this section.

(e) Wage Requirements. — A development financing plan shall include a requirement that the initial users of a new manufacturing facility to be located in the district and included in the plan must pay its employees an average weekly manufacturing wage that is either above the average manufacturing wage paid in the county in which the district will be located or not less than ten percent (10%) above the average weekly manufacturing wage paid in the State. The plan may include information on the wages to be paid by the initial users of a new manufacturing facility to its employees and any provisions necessary to implement the wage requirement. The issuing unit's governing body shall not adopt a plan until the Secretary of Commerce certifies that the Secretary has reviewed the average weekly manufacturing wage required by the plan to be paid to the employees of a new manufacturing facility and has found either (i) that the wages proposed by the initial users of a new manufacturing facility are in compliance with the amount required by this subsection or (ii) that the plan is exempt from the requirement of this subsection. The Secretary of Commerce may exempt a plan from the requirement of this subsection if the Secretary receives a resolution from the issuing unit's governing body requesting an exemption from the wage requirement and a letter from an appropriate State official, selected by the Secretary, finding that unemployment in the county in which the proposed district is to be located is especially severe. Upon the creation of the district, the unit of local government proposing the creation of the district shall take any lawful actions necessary to require compliance with the applicable wage requirement by the initial users of any new manufacturing facility included in the plan; however, failure to take such actions or obtain such compliance shall not affect the validity of any proceedings for the creation of the district, the existence of the district, or the validity of any debt instruments issued under Article 6 of Chapter 159 of the General Statutes. All findings and determinations made by the Secretary of Commerce under this subsection shall be binding and conclusive. For purposes of this section, the term 'manufacturing facility' means any facility that is used in the manufacturing or production of tangible personal property, including the processing resulting in a change in the condition of the property.

(f) County Review. — If the unit creating a development financing district and adopting a development financing plan is a city, town, or incorporated village, before adopting the plan the unit's governing body shall send notice of the plan, by first-class mail, to the board of county commissioners of the county or counties in which the development financing district is located. The person mailing the notice shall certify that fact, and the date thereof, to the governing body, and the certificate is conclusive in the absence of fraud. Unless the board of county commissioners (or either board, if the district is in two counties) by resolution disapproves the proposed plan within 28 days after the date the notice is mailed, the governing body may proceed to adopt the plan.

(g) Environmental Review. — Before adopting a plan for development financing districts, the issuing unit's governing body shall submit the plan to the Secretary of Environment and Natural Resources to review to determine if the construction and operation of any new manufacturing facility in the district will have a materially adverse effect on the environment and whether the company that will operate the facility has operated in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. If the Secretary finds that the new manufacturing facility will not have a materially adverse effect on the environment and that the company that will operate the facility has operated other facilities in compliance with environmental requirements, the Secretary shall approve the plan. In making the determination on environmental impact, the Secretary shall use the same criteria that apply to the determination under G.S. 159C-7 of whether an industrial project will have a materially adverse effect on the environment. The findings of the Secretary are conclusive and binding.

(h) Plan Adoption. — Before adopting a plan for a development financing district, the issuing unit's governing body shall hold a public hearing on the plan. The governing body shall, no more than 30 days and no less than 14 days before the day of the hearing, cause notice of the hearing to be published once and shall cause notice of the hearing to be mailed, by first-class mail, to all property owners and mailing addresses of the development financing district and to the governing body of any special district, as defined by G.S. 159-7, within which the development financing district is located. The notice shall state the time and place of the hearing, shall specify its purpose, and shall state that a copy of the proposed plan is available for public inspection in the office of the unit's clerk. At the public hearing, the governing body shall hear anyone who wishes to speak with respect to the proposed district and proposed plan. Unless a board of county commissioners or the Secretary of Environment and Natural Resources has disapproved the plan pursuant to subsection (f) or (g) of this section, the governing body may adopt the plan, with or without amendment, at any time after the public hearing. However, the plan and the district do not become effective until the unit's application to issue project development financing debt instruments has been approved by the Local Government Commission, pursuant to Article 6 of Chapter 159 of the General Statutes.

(i) Plan Modification. — Subject to the limitations of this subsection, a governing body may, after the effective date of the district, amend a development financing plan adopted for a development financing district. Before making any amendment, the governing body shall follow the procedures and meet the requirements of subsections (e) through (h) of this section. The boundaries of the district may be enlarged only during the first five years after the effective date of the district and only if the area to be added has been or is about to be developed and the development is primarily attributable to development that has occurred within the district, as certified by the Local Government Commission. The boundaries of the district may be reduced at any time, but the unit may agree with the holders of any project development financing debt instruments to restrict its power to reduce district boundaries.

(j) Plan Implementation. — In implementing a development financing plan, a unit may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof. A private agency that enters into a contract with a unit for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. (2003-403, s. 19; 2005-238, s. 1; 2005-407, s. 1; 2006-211, s. 3; 2006-252, s. 2.10.)

Effect of Amendments. —

Session Laws 2006-211, s. 3, effective August 8, 2006, added the last sentence in subsection (j).

Session Laws 2006-252, s. 2.10, effective January 1, 2007, substituted "a development tier one area, as defined in G.S. 143B-437.08" for "an enterprise tier one area as defined in G.S. 105-129.3" in the second paragraph of subdivision (a)(1).

ARTICLE 2.

Economic Development Commissions.

§ 158-8.5. Annual reporting requirement.

By February 15 of each year, the commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33 shall publish a report containing the information required by this section. As a condition on the receipt of State funds, the Charlotte Regional Partnership, Inc., the Piedmont Triad Regional Partnership, and the Research Triangle Regional Partnership shall, by February 15 of each year, publish a report containing the information required by this section. The commissions and partnerships shall also submit a copy of the report to the Department of Commerce, the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development Oversight Committee, and the Fiscal Research Division of the General Assembly. The report shall include all of the following:

(1) A summary of the preceding year's program activities, objectives, and accomplishments.
(2) The preceding fiscal year's itemized expenditures of State funds.
(3) A demonstration of how the commission's or partnership's regional economic development and marketing strategy aligns with the State's overall economic development and marketing strategies.
(4) A demonstration of how the commission's or partnership's involvement in promotion activities has generated leads.
(5) The most recent audited annual financial statement regarding State funds. (2006-263, s. 1.)

Editor's Note. — Session Laws 2006-263, s. 3, made this section effective October 1, 2006.

§ 158-8.6. Uniform standards.

The Department of Commerce, in consultation with the commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership, shall develop uniform standards for the use of State funds related to accounting procedures, personnel practices, and purchasing and contracts procedures. The commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33 shall follow these standards. As a condition on the receipt of State funds, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership shall follow these standards. (2006-263, s. 1.)

Editor's Note. — Session Laws 2006-263, s. 3, made this section effective October 1, 2006.

Session Laws 2006-263, s. 2, provides: "The Department of Commerce may hire a consultant to assist in the development of the uniform standards required by G.S. 158-8.6, as enacted by Section 1 of this act. As a condition on the receipt of State funds, the commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership, shall pay the costs of developing the uniform standards required by G.S. 158-8.6, as enacted by Section 1 of this act, in equal shares up to a maximum aggregate amount of fifty thousand dollars ($50,000). The Department of Commerce shall pay from funds available in its 2006-2007 budget any costs for developing the uniform standards in excess of fifty thousand dollars ($50,000)."

§ 158-8.7. Use of State funds.

The commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership, are subject to all of the provisions of G.S. 143-6.2. (2006-263, s. 1.)

Effect of Amendments. — Session Laws 2006-263, s. 3, made this section effective October 1, 2006.

§ 158-8.8. Orientation for board members.

The commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33 shall hold an orientation session for all newly appointed commission members. The orientation shall provide information on the duties and responsibilities of commission members and shall include information on the commission's policies and State law regarding conflicts of interest, financial disclosure, and ethical behavior. At least once a year, each of these commissions shall distribute to all commission members information on the commission's policies and State law regarding conflicts of interest, financial disclosure, and ethical behavior. (2006-263, s. 1.)

Editor's Note. — Session Laws 2006-263, s. 3, made this section effective October 1, 2006.

ARTICLE 4.

North Carolina's Eastern Region.

§ 158-33. Creation of North Carolina's Eastern Region.

(a) Resolution to Create Region. — Any three or more of the counties listed in G.S. 158-31 may create North Carolina's Eastern Region as provided in this section. In order to create the Region, the governing bodies of the counties creating the Region must first adopt, on or before October 1, 1993, substantially similar resolutions stating their intent to organize the Region pursuant to this Article. Each resolution shall include articles of incorporation for the Region that shall set forth the following:

(1) The name of the Region, which shall be "North Carolina's Eastern Region."

(2) A statement that the Region is organized under this Article.

(3) The names of the organizing counties known to the county adopting the resolution.

(b) Public Hearing. — Each resolution may be adopted only after a public hearing on the question, notice of which hearing has been given by publication at least once after July 25, 1993, and not less than 10 days before the date set for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, set forth the proposed articles of incorporation of the Region, and state the time and place of the public hearing to be held on the resolution. No other publication or notice of the resolution is required.

(c) Incorporation of Region. — Each county that adopts a resolution as provided in this section shall file a certified copy of the resolution with the Secretary of State on or before October 15, 1993, together with proof of publication of notice of the hearing on the resolution. Each resolution must contain the county clerk's attestation that it was adopted by the board of commissioners. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that notices of the hearings were properly published, the Secretary of State shall file the resolutions and proofs of publication and shall issue a certificate of incorporation for the Region under the seal of the State. The Secretary of State shall record the certificate of incorporation in an appropriate book of record in the Secretary of State's office.

(d) Effect of Incorporation. — The issuance of the certificate of incorporation by the Secretary of State shall constitute North Carolina's Eastern Region a public body and body politic and corporate of the State. The certificate of incorporation shall be conclusive evidence that the Region has been duly created and established under this Article. (1993, c. 544, s. 1; 2005-364, s. 1; 2006-226, s. 26; 2006-264, s. 76.8.)

Effect of Amendments. — Session Laws 2006-226, s. 26, effective August 10, 2006, substituted "North Carolina's Eastern Region" for "Global TransPark Development Zone" in the section catchline.

Session Laws 2006-264, s. 76.8, effective August 27, 2006, substituted "North Carolina's Eastern Region" for "Global TransPark Development Zone" in the section catchline.

Chapter 159.

Local Government Finance.

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

Article 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

Sec.
159-7. Short title; definitions; local acts superseded.

SUBCHAPTER IV. LONG-TERM FINANCING.

Article 5.

Revenue Bonds.

Sec.
159-83. Powers.

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. Short title; definitions; local acts superseded.

(a) This Article may be cited as "The Local Government Budget and Fiscal Control Act."

(b) **(Effective until July 1, 2007)** The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning.

(1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.

(2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.

(4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, to maintain sinking funds, and to pay installments on debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes accruing within a fiscal year.

(5), (6) Repealed by Session Laws 1975, c. 514, s. 2.

(7) "Fiscal year" is the annual period for the compilation of fiscal operations, as prescribed in G.S. 159-8(b).

(8) "Fund" is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

(9) Repealed by Session Laws 1975, c. 514, s. 2.

G.S. 159-7(b) is set out twice. See note.

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(10) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the Executive Budget Act (Article 1 of Chapter 143 of the General Statutes) or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the Executive Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(11) Repealed by Session Laws 1975, c. 514, s. 2.

(12) "Sinking fund" means a fund held for the retirement of term bonds.

(13) "Special district" is a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of a particular utility or public service enterprises.

(14) "Taxes" do not include special assessments.

(15) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the Executive Budget Act (Article 1 of Chapter 143 of the General Statutes) and that has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(16) "Vending facilities" has the same meaning as it does in G.S. 143-12.1.

(b) **(Effective July 1, 2007)** The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning.

(1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.

(2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.

(4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, to maintain sinking funds, and to pay installments on debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes accruing within a fiscal year.

(5), (6) Repealed by Session Laws 1975, c. 514, s. 2.

(7) "Fiscal year" is the annual period for the compilation of fiscal operations, as prescribed in G.S. 159-8(b).

(8) "Fund" is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

(9) Repealed by Session Laws 1975, c. 514, s. 2.

(10) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the State Budget Act (Chapter 143C of the General Statutes) or a local governmental authority,

board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the State Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(11) Repealed by Session Laws 1975, c. 514, s. 2.

(12) "Sinking fund" means a fund held for the retirement of term bonds.

(13) "Special district" is a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of a particular utility or public service enterprises.

(14) "Taxes" do not include special assessments.

(15) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the State Budget Act (Chapter 143C of the General Statutes) and that has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(16) "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means.

(c) It is the intent of the General Assembly by enactment of this Article to prescribe for local governments and public authorities a uniform system of budget adoption and administration and fiscal control. To this end and except as otherwise provided in this Article, all provisions of general laws, city charters, and local acts in effect as of July 1, 1973 and in conflict with the provisions of Part 1 or Part 3 of this Article are repealed. No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of Part 1 or Part 3 of this Article unless it expressly so provides by specific reference to the appropriate section.

(d) Except as expressly provided herein, this Article does not apply to school administrative units. The adoption and administration of budgets for the public school system and the management of the fiscal affairs of school administrative units are governed by the School Budget and Fiscal Control Act, Chapter 115, Article 9. However, this Article and the School Budget and Fiscal Control Act shall be construed together to the end that the administration of the fiscal affairs of counties and school administrative units may be most effectively and efficiently administered. (1927, c. 146, ss. 1, 2; 1955, c. 724; 1971, c. 780, s. 1; 1973, c. 474, ss. 3, 4; 1975, c. 437, s. 12; c. 514, s. 2; 1981, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 173; 1987, c. 282, ss. 30, 31; c. 796, s. 3(1); 1989, c. 756, s. 3; 1995, c. 461, s. 9; 2006-203, s. 125.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2007. The second version of subsection (b) set out above is effective July 1, 2007.

Local Modification. — Scotland: 1979, c. 187; (As to Article 3) city of Northwest: 1993, c. 222, s. 3 (fiscal year 1993-94); town of Arlington: 2001-16, s. 6(b) (for fiscal year 2001-2002); (As to Article 3) town of Cedar Point: 1987 (Reg. Sess., 1988), c. 1005; town of Dobbins Heights: 1983, c. 658; town of Duck: 2001-394, s. 1 (for fiscal years 2001-2002, 2002-2003); (As to Article 3) town of Fairview: 2001-428, s. 2 (for fiscal year 2001-2002); town of Jonesville: 2001-16, s. 6(b) (for fiscal year 2001-2002); town of Leland: 1989, c. 564, s. 3; town of Lewisville: (As to Article 3) 1991, c. 116 s. 1; town of Midland:

2000-91, s. 2 (for fiscal year 2000-01); (As to Article 3) town of Midway: 2006-37, s. 1; (As to Article 3) town of Millers Creek: 2001-45, s. 2 (for fiscal year 2000-2001); town of Mineral Springs: 1999-175, s. 1 (for fiscal years 1998-1999 and 1999-2000); town of Red Cross: 2002-56, s. 2 (for fiscal years 2001-2003); (As to Article 3) town of Rimertown: 1999-284, s. 2; (As to Articles 3 and 19) town of St. James: 1999-241, s. 1; (As to Article 3) town of Sandy Creek: 1987 (Reg. Sess., 1988), c. 1007, s. 3; (As to Article 3) town of Sandyfield: 1993 (Reg. Sess., 1994), c. 729, s. 3 (for fiscal year 1994-95); (As to Article 3) town of Santeetlah: 1987 (Reg. Sess., 1988), c. 1012; (As to Article 3) town of Sawmills: 1987, c. 648; town of Stokesdale: 1989, c. 488 s. 2; town of Whisett (As to Article 3): 1991, c. 684; (As to Article 3) village of Marvin: 1993 (Reg. Sess., 1994), c. 641, s. 2; (As to Article 3) village of St. Helena: 1987 (Reg. Sess., 1988), c. 942, s. 2; (As to Part 1 of Article 3) village of Wesley Chapel: 1998-43, s. 2 (for fiscal year 1998-99).

Editor's Note. —

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 125, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subdivision (b)(10), substituted "State Budget Act (Chapter 143C of the General Statutes)" for "Executive Budget Act (Article 1 of Chapter 143 of the General Statutes)" and "State Budget Act" for "Executive Budget Act"; in subdivision (b)(15), substituted "State Budget Act (Chapter 143C of the General Statutes)" for "Executive Budget Act (Article 1 of Chapter 143 of the General Statutes)"; and, substituted "G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means" for "G.S. 143-12.1" in subdivision (b)(16).

Part 3. Fiscal Control.

§ 159-28. Budgetary accounting for appropriations.

CASE NOTES

Failure to Show Existence of Certificate. —

Summary judgment for a county was affirmed as a police officer could not obtain damages for breach of a memorandum requiring the county to pay her a special allowance since the memorandum did not include a preaudit certificate as required by G.S.159-28(a). Finger v. Gaston County, — N.C. App. —, 631 S.E.2d 171, 2006 N.C. App. LEXIS 1396 (2006).

Because preaudit certificate was never signed by a finance officer as required by section, the settlement agreement did not meet the requirements of G.S. 159-28(a), and the trial court erred in granting company's motion to enforce the settlement agreement with the county. Cabarrus County v. Systel Bus. Equip. Co., 171 N.C. App. 423, 614 S.E.2d 596, 2005 N.C. App. LEXIS 1201 (2005), cert. denied, 360 N.C. 61, 621 S.E.2d 177 (2005).

Part 4. Public Hospitals.

§ 159-39. Special regulations pertaining to public hospitals.

CASE NOTES

Cited in Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp. Auth., 172 N.C. App. 486, 616 S.E.2d 602, 2005 N.C. App. LEXIS 1784 (2005), cert. denied, — N.C. —, 626 S.E.2d 298, 626 S.E.2d 299 (2005).

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 5.

Revenue Bonds.

§ 159-83. Powers.

(a) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:

(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest. The authority to exercise the power of eminent domain granted in this subdivision shall not apply to economic development projects described in G.S. 159-81(3)m., unless revenue bonds for the economic development project were approved by the Local Government Commission pursuant to G.S. 159-87 prior to August 15, 2006.

(2) To sell, exchange, transfer, assign or otherwise dispose of any revenue bond project or portion thereof or interest therein determined (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board not to be required for any public purpose.

(3) To sell, furnish, and distribute the services, facilities, or commodities of revenue bond projects.

(4) To enter into contracts with any person, firm, or corporation, public or private, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities or commodities thereof.

(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, and to pledge, mortgage, or grant a security interest in all or a portion of the real and personal property, whether owned or leased, comprising any revenue-producing utility or public service enterprise facilities or systems acquired, constructed, reconstructed, extended, bettered, or improved with the proceeds of the borrowing. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subdivision may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property. The granting of a lien on, or security interest in, hospital or health-related real or tangible personal property and the conveyance of this property

pursuant to the provisions of the lien or security interest are not subject to the provisions of G.S. 131E-8, 131E-13, or 131E-14.

(6) To establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, or other charges, free of any control or regulation by the North Carolina Utilities Commission or any other regulatory body except as provided in G.S. 159-95 for the use, services, facilities, and commodities of or furnished by any revenue bond project, and to provide methods of collection of and penalties for nonpayment of such rates, fees, rentals, tolls, or other charges. The rates, fees, rentals, tolls and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense and maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) on all revenue bonds or bond anticipation notes secured thereby, and to fulfill the terms of any agreements made by the State or the issuing municipality with the holders of revenue bonds issued to finance all or any portion of the cost of the project.

(7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of the cost of operating, maintaining, and improving parking facilities whether on-street or off-street, and the principal of and the interest on revenue bonds or bond anticipation notes issued for on-street or off-street parking facilities.

(8) To pledge to the payment of its revenue bonds or bond anticipation notes and interest thereon revenues from one or more revenue bond projects and any leases or agreements to secure such payment, including revenues from improvements, betterments, or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities, and properties of the projects to be improved, bettered, or extended.

(8a) In the case of any county, city, town, or incorporated village, to make loans or advances to a municipality to provide funds to the municipality to pay any costs of any revenue bond project. Funds received by a municipality in reimbursement of a loan or advance shall be distributed and restricted as provided in G.S. 159-27.1.

(9) To appropriate, apply, or expend for the following purposes the proceeds of its revenue bonds, notes issued in anticipation thereof, and revenues pledged under any resolution or order authorizing or securing the bonds: (i) to pay interest on the bonds or notes and the principal or redemption price thereof when due; (ii) to meet reserves and other requirements set forth in the bond order or trust agreement; (iii) to pay the costs of the revenue bond projects authorized in the bond order, reimburse funds loaned or advanced for the costs of these revenue bond projects in accordance with the bond order, and provide working capital for initial maintenance and operation until funds are available from revenues; (iv) to pay and discharge revenue bonds and notes issued in anticipation thereof; (v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter or under any act of the General Assembly, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes.

(10) To make and enforce rules and regulations governing the use, maintenance, and operation of revenue bond projects.

(11) To accept gifts or grants of real or personal property, money, material, labor, or supplies for the acquisition, construction, reconstruction, extension, improvement, betterment, maintenance, or operation of

any revenue bond project and to make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.

(12) To accept loans, grants, or contributions from, and to enter into contracts and cooperate with the United States of America, the State of North Carolina, or any agency thereof, with respect to any revenue bond project.

(13) To enter on any lands, waters, and premises for the purpose of making surveys, borings, soundings, examinations, and other preliminary studies for constructing and operating any revenue bond project.

(14) To retain and employ consultants and other persons on a contract basis for rendering professional, financial, or technical assistance and advice and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed.

(15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions as and for such term of years, not in excess of 40 years, (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified.

(16) To execute such instruments and agreements and to do all things necessary or therein in the exercise of the powers herein granted, or in the performance of the covenants or duties of the State or a municipality, as the case may be, or to secure the payment of its revenue bonds.

(b) Any contract, agreement, lease, deed, covenant, or other instrument or document evidencing an agreement or covenant between bondholders or any public agency and the State or a municipality issuing revenue bonds with respect to any of the powers conferred in this section shall be approved by the commission.

(c) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, notwithstanding any provisions of this Article to the contrary, in connection with the development of new and existing seaports and airports:

(1) To acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interests therein;

(2) To finance and refinance for public and private parties seaport and airport facilities and improvements that relate to, develop, or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation, and environmental facilities and improvements;

(3) To secure any such financing or refinancing by all or any portion of its revenues, income or assets or other available moneys associated with any of its seaport or airport facilities and with the facilities and

improvements to be financed or refinanced, and by foreclosable liens on all or any part of its properties associated with any of its seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of its faith and credit.

(d) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, notwithstanding any provisions of this Article or any other statute to the contrary, in connection with the development of facilities for the use of any agency or agencies of the government of the United States of America:

(1) To acquire, construct, own jointly with public and private parties, lease as leasor or leasee, mortgage, sell, or otherwise dispose of lands, facilities and improvements, including undivided interests therein and to do so, regardless of the provisions of any other statute, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this subsection;

(2) To finance and refinance facilities and related improvements for the use of any agency of the government of the United States of America;

(3) To secure any such financing or refinancing by all or any portion of the revenue, income or assets or other available monies associated with such facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of its faith and credit.

(e) Repealed by Session Laws 2001-174, s. 39, effective November 29, 2001.

(f) In addition to the powers they may now or hereafter have, each municipality has the power to finance and refinance the cost of water treatment facilities and related transmission mains, and their expansion and improvement, all or some portion of which may be located on land leased from an authority created under the provisions of G.S. 162A-3.1, for a term not less than the term of the obligations issued or otherwise incurred for the purpose. The authority may own or operate (or both) such facilities and mains and may contract with one or more of the political subdivisions that are members of the authority for operation of all or portions thereof. For this purpose, each municipality has, in addition to the powers it has under applicable law, all the powers under G.S. 162A-6(b) of an authority created under G.S. 162A-3.1, and the political subdivisions that are members of the authority and that contract with such municipality for a supply of water and a portion of the capacity of the water treatment facilities and mains shall have all the powers of political subdivisions under G.S. 162A-6(b) and G.S. 162A-16 contracting with an authority created under G.S. 162A-3.1. This provision is supplemental to the other provisions of this Article. (Ex. Sess., 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2; 1969, c. 1118, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 17; 1983, c. 554, ss. 3-4; 1985, c. 723, s. 2; 1985 (Reg. Sess., 1986), c. 795, s. 1; c. 933, s. 4; 1987 (Reg. Sess., 1988), c. 976, s. 2; 1989, c. 168, ss. 39, 40; 1991, c. 508, s. 2; 2001-474, ss. 38, 39; 2005-238, s. 4; 2005-249, s. 1; 2006-224, s. 3; 2006-259, s. 47.)

Effect of Amendments. —

Session Laws 2006-224, s. 3, effective August 15, 2006, added the last sentence in subdivision (a)(1).

Session Laws 2006-259, s. 47, amended Session Laws 2006-224, by substituting "August 15, 2006" for "July 1, 2006" throughout the act.

Chapter 160A.

Cities and Towns.

Article 4A.

Extension of Corporate Limits.

Part 2. Annexation by Cities of Less Than 5,000.

Sec.
160A-37. Procedure for annexation.
160A-37.3. Contract with private solid waste collection firm(s).

Part 3. Annexation by Cities of 5,000 or More.

160A-49. Procedure for annexation.
160A-49.3. Contract with private solid waste collection firms.

Part 4. Annexation of Noncontiguous Areas.

160A-58.1. Petition for annexation; standards.

Article 9.

Taxation.

160A-211. Privilege license taxes.
160A-214. [Repealed.]
160A-215. Uniform provisions for room occupancy taxes.

Article 12.

Sale and Disposition of Property.

160A-270. Public auction.

Article 13.

Law Enforcement.

160A-288. Cooperation between law-enforcement agencies.
160A-288.2. Assistance to State law-enforcement agencies.
160A-289.2. Neighborhood crime watch programs.

Article 15.

Streets, Traffic and Parking.

160A-296. Establishment and control of streets; center and edge lines.
160A-303. Removal and disposal of junked and abandoned motor vehicles and motor vehicles that constitute a safety hazard.
Sec.
160A-303.2. Regulation of abandonment of junked motor vehicles.

Article 16.

Public Enterprises.

Part 1. General Provisions.

160A-319. Utility franchises.
160A-324. Contract with private solid waste collection firm(s).
160A-327. Displacement of private solid waste collection services.

Article 19.

Planning and Regulation of Development.

Part 3. Zoning.

160A-383. Purposes in view.

Part 5. Building Inspection.

160A-425.1. Unsafe buildings condemned in certain localities.
160A-426. Unsafe buildings condemned in other localities.

Part 8. Miscellaneous Powers.

160A-456. Community development programs and activities.
160A-459. Stormwater control.

Article 20.

Interlocal Cooperation.

Part 2. Regional Councils of Governments.

160A-475. Specific powers of council.

Article 22.

Urban Redevelopment Law.

160A-503. Definitions.
160A-512. Powers of commission.
160A-515. Eminent domain.
160A-515.1. Project development financing.

Article 23.

Municipal Service Districts.

160A-537. Definition of service districts.

Article 1.

Definitions and Statutory Construction.

§ 160A-3. General laws supplementary to charters.

CASE NOTES

City Charter Superseded by State Statute. — Summary judgment was properly awarded to a city and its officials in an action by property owners challenging an annexation because, pursuant to G.S. 160A-3(c), the statutory provision establishing involuntary annexations superseded a city charter provision permitting only voluntary annexations. Brown v. City of Winston-Salem, 171 N.C. App. 266, 614 S.E.2d 599, 2005 N.C. App. LEXIS 1266 (2005).

§ 160A-4. Broad construction.

CASE NOTES

Cited in Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

Article 4A.

Extension of Corporate Limits.

Part 1. Extension by Petition.

§ 160A-31. Annexation by petition.

CASE NOTES

Annexation Held Proper. — City's division of an annexation area into sub-areas did not result in the improper annexation of an "island" not contiguous with the city limits as of the date of the original resolution of intent, although the boundaries of the sub-area, if considered in isolation, rather than as a sub-part of the area originally identified and eventually annexed, were not contiguous with the city limits on the date of the initial resolution. United States Cold Storage, Inc. v. City of Lumberton, 170 N.C. App. 411, 612 S.E.2d 415, 2005 N.C. App. LEXIS 1014 (2005).

Part 2. Annexation by Cities of Less Than 5,000.

§ 160A-33. Declaration of policy.

CASE NOTES

Annexation Proper. — Trial court properly found that a village provided independent administrative, engineering, auditing, legal, and planning services to its residents, and that the village was exploring options for obtaining additional police patrol services, and had committed itself to providing its current and future levels of such services to its residents in a non-discriminatory manner; the trial court found that the village was going to provide some additional services to the area to be annexed, notwithstanding land owners' claim they would receive no additional services whatsoever, and the trial court's order affirming the annexation was proper. Nolan v. Village of Marvin, 172 N.C. App. 84, 615 S.E.2d 898, 2005

N.C. App. LEXIS 1432 (2005).

Annexation Ordinance Unenforceable. — Appellate court's decision that upheld the trial court's judgment upholding the annexation ordinance was reversed, as the village's annexation ordinance did not provide for meaningful extension of municipal services to the lots subject to annexation, which meant that the village had not substantially complied with the statutory procedures for annexation and that the property owners would suffer material injury, in the form of municipal taxes, if annexation proceeded. Nolan v. Village of Marvin, 360 N.C. 256, 624 S.E.2d 305, 2006 N.C. LEXIS 3 (2006).

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

Annexation Proper. — Trial court properly found that a village provided independent administrative, engineering, auditing, legal, and planning services to its residents, and that the village was exploring options for obtaining additional police patrol services, and had committed itself to providing its current and future levels of such services to its residents in a non-discriminatory manner; the trial court found that the village was going to provide some additional services to the area to be annexed, notwithstanding land owners' claim they would receive no additional services whatsoever, and the trial court's order affirming the annexation was proper. Nolan v. Village of Marvin, 172 N.C. App. 84, 615 S.E.2d 898, 2005 N.C. App. LEXIS 1432 (2005).

Annexation Ordinance Unenforceable. — Appellate court's decision that upheld the trial court's judgment upholding the annexation ordinance was reversed, as the village's annexation ordinance did not provide for meaningful extension of municipal services to the lots subject to annexation, which meant that the village had not substantially complied with the statutory procedures for annexation and that the property owners would suffer material injury, in the form of municipal taxes, if annexation proceeds. Nolan v. Village of Marvin, 360 N.C. 256, 624 S.E.2d 305, 2006 N.C. LEXIS 3 (2006).

§ 160A-37. Procedure for annexation.

(a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration, fix a date for the public informational meeting, and fix a date for a public hearing on the question of annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution. The date for the public hearing to be not less than 60 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall:

(1) Fix the date, hour and place of the public informational meeting and the date, hour, and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.

(3) State that the report required in G.S. 160A-35 will be available at the office of the municipal clerk at least 30 days prior to the date of the public informational meeting.

(4) Include an explanation of an owner's rights pursuant to subsection (f1) and (f2) of this section.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the informational meeting in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public informational meeting. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public informational meeting. In addition, notice shall be mailed at least four weeks prior to date of the informational meeting, by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the informational meeting. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public informational meeting on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(c) Action Prior to Informational Meeting. — At least 30 days before the date of the public informational meeting, the governing board shall approve the report provided for in G.S. 160A-35, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk at least 30 days before the public informational meeting a legible map of the area to be annexed and a list of the persons holding freehold interests in property in the area to be annexed that it has identified.

(c1) Public Informational Meeting. — At the public informational meeting a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(d) Public Hearing. — At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. — Except as provided in subsection (f1) of this section, from and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f1) Property Subject to Present-Use Value Appraisal. — If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that meets either of the conditions listed below on the effective date of annexation, then the annexation becomes effective as to that property pursuant to subsection (f2) of this section:

(1) The land is being taxed at present-use value pursuant to G.S. 105-277.4.

(2) The land meets both of the following conditions:

  a. On the date of the resolution of intent for annexation it was being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land had not been in use for actual production for the required time under G.S. 105-277.3.

  b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision.

(f2) Effective Date of Annexation for Certain Property. — Annexation of property subject to annexation under subsection (f1) of this section becomes effective as provided in this subsection:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city

boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of the property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city.

(g) Simultaneous Annexation Proceedings. — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-35(3) and subsection (e) of this section, the person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of G.S. 160A-35(3)b. require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or a planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation and included a statement in the resolution notifying persons subject to the annexation of their rights under subsections (f1) and (f2) of this section; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map, shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a city fails to deliver police protection, fire protection, solid waste or street maintenance services as provided for in G.S. 160A-35(3)a. within 60 days after the effective date of the annexation, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city for taxes that have been levied as of the end of the 60-day period, if the petition is filed not more than 90 days after the expiration of the 60-day period. If the Local Government Commission finds that services were not extended by the end of the 60-day period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after extension of the municipal services. (1959, c. 1010, s. 5; 1967, c. 1226, s. 1; 1973, c. 426, s. 74; 1975, c. 576, s. 3; 1977, c. 517, s. 5; 1983, c. 636, ss. 2, 4, 6, 36; 1985, c. 384, s. 1; 1987, c. 44, s. 1; 1989, c. 598, s. 11; 1998-150, s. 7; 2001-487, s. 36; 2006-264, s. 17(a)-(c).)

Effect of Amendments. — Session Laws 2006-264, s. 17(a)-(c), effective August 27, 2006, deleted "Land that" from the beginning of subdivisions (f1)(1) and (f1)(2); added "both of the following conditions" to the end of the introductory language of subdivision (f1)(2); substituted "land had" for "land has" near the end of subdivision (f1)(2)a.; made a minor punctuation change in subsection (f2); substituted "subsection (e) of this section, the" for "160A-37(e), such" in the introductory paragraph of subsection (h); and substituted "G.S. 160A-35(3)b." for "G.S. 160A-35(3)c" in the middle of the second subdivision (h)(1).

CASE NOTES

Informational Meeting. — Land owners failed to demonstrate how they had suffered material injury as a result of a village's failure to answer one question at the informational meeting, the answer to which could have no effect on the validity of the proposed annexation, and the annexation was proper. Nolan v. Village of Marvin, 172 N.C. App. 84, 615 S.E.2d 898, 2005 N.C. App. LEXIS 1432 (2005).

Cited in Nolan v. Village of Marvin, 360 N.C. 256, 624 S.E.2d 305, 2006 N.C. LEXIS 3 (2006).

§ 160A-37.3. Contract with private solid waste collection firm(s).

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the resolution of intent or resolution of consideration was providing solid waste collection services in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still providing such services, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Pay to the firm the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

(1) Subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(2) Contacted the city clerk pursuant to public notice published by the city, pursuant to G.S. 160A-37(b), at least 10 days before the hearing and provided to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) At least four weeks prior to the date of the informational meeting, the city shall provide written notice of the resolution of intent to all firms serving the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

(1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the firms, or by the city as to customers not served by the firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards existing at the time of notice published pursuant to G.S. 160A-37(b), with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers, and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the firm under this subsection, the matters shall be determined by the Local Government Commission.

(e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which a resolution of intent is adopted on or after January 1, 2007.

(g) The firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than 30 days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request states that statutory rights will be forfeited in the absence of a timely response and includes a specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. — A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenue shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. — A private solid waste collection firm. (1985, c. 610, s. 3; 1987, c. 827, s. 1; 1989, c. 598, s. 6; 1998-150, s. 9; 2006-193, s. 1.)

Effect of Amendments. — Session Laws 2006-193, s. 1, applicable to annexations for which a resolution of intent is adopted on or after January 1, 2007, rewrote subsections (a) and (b); added subsections (a1), (a2) and (i); deleted "private" preceding "firm" and "firms" throughout subsections (c), (d) and (g); substituted "in writing, delivered by certified mail to the firm in question with 30 days to cure" for "for" in subdivision (c)(5); inserted "existing at the time of notice published pursuant to G.S. 160A-37(b)" in subdivision (c)(6); substituted "the" for "such" near the end of subsection (d); deleted subsections (e) and (f); and substituted "30 days" for "10 business days" twice in subsection (h).

§ 160A-38. Appeal.

CASE NOTES

Annexation Properly Affirmed. — Trial court properly found that a village provided independent administrative, engineering, auditing, legal, and planning services to its residents, and that the village was exploring options for obtaining additional police patrol services, and had committed itself to providing its current and future levels of such services to its residents in a non-discriminatory manner; the trial court found that the village was going to provide some additional services to the area to be annexed, notwithstanding land owners' claim they would receive no additional services whatsoever, and the trial court's order affirming the annexation was proper. Nolan v. Village of Marvin, 172 N.C. App. 84, 615 S.E.2d 898, 2005 N.C. App. LEXIS 1432 (2005).

Cited in Nolan v. Village of Marvin, 360 N.C. 256, 624 S.E.2d 305, 2006 N.C. LEXIS 3 (2006).

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy.

CASE NOTES

Cited in Brown v. City of Winston-Salem, 171 N.C. App. 266, 614 S.E.2d 599, 2005 N.C. App. LEXIS 1266 (2005).

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

I. In General.
III. Plans for Extending Services.
  D. Water and Sewer Service.

I. IN GENERAL.

Applied in Brown v. City of Winston-Salem, — N.C. App. —, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

III. PLANS FOR EXTENDING SERVICES.

D. Water and Sewer Service.

Remand When Protections of Section not Honored. — Where petitioners show that the degree of noncompliance with statutory requirements for annexation is so great as to eviscerate the protections provided in G.S. 160A-47, a trial court does not err in declaring an ordinance null and void. However, in order for a trial court to properly declare an ordinance null and void under G.S. 160A-50(g)(4), it must specifically find that "the ordinance cannot be corrected by remand" as opposed to finding that "the ordinance is not likely to be corrected on remand." Because the trial court failed to make the appropriate finding, perhaps acting under a misapprehension of applicable law, the matter was remanded to the trial court for appropriate findings to support one of the statutory grounds under G.S. 160A-50(g). Fix v. City of Eden, — N.C. App. —, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

Duties under Section. — The requirements of G.S. 160A-47 are that plans for extension to the area to be annexed of all major municipal services performed within the municipality at the time of annexation is a condition precedent to annexation. The minimum requirements of G.S. 160A-47 are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. A city need only substantially comply with G.S. 160A-47. A city is required to provide major municipal services under G.S. 160A-47, and its performance of that duty may not be made to depend upon a doubtful contingency. Fix v. City of Eden, —

N.C. App. —, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

§ 160A-48. Character of area to be annexed.

CASE NOTES

Contiguity Requirement Met. —

City's division of an annexation area into sub-areas did not result in the improper annexation of an "island" not contiguous with the city limits as of the date of the original resolution of intent, although the boundaries of the sub-area, if considered in isolation, rather than as a sub-part of the area originally identified and eventually annexed, were not contiguous with the city limits on the date of the initial resolution. United States Cold Storage, Inc. v. City of Lumberton, 170 N.C. App. 411, 612 S.E.2d 415, 2005 N.C. App. LEXIS 1014 (2005).

Judicial Review. —

Petitioners challenging a city's annexation ordinances failed to show the city misclassified the lots to be annexed or that the county tax maps it relied on were inaccurate. As petitioners offered no reliable evidence that the city's methodology was inaccurate and not calculated to provide reasonably accurate results, as required by G.S. 106A-54, the ordinances were properly deemed valid. Brown v. City of Winston-Salem, — N.C. App. —, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

Applied in Fix v. City of Eden, — N.C. App. —, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

§ 160A-49. Procedure for annexation.

(a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration, fix a date for a public informational meeting, and fix a date for a public hearing on the question of annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution. The date for the public hearing to be not less than 60 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall:

(1) Fix the date, hour and place of the public informational meeting and the date, hour, and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.

(3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public informational meeting.

(4) Include a notice of a property owner's rights to request water and sewer service in accordance with G.S. 160A-47.

(5) Include an explanation of a property owner's rights pursuant to subsections (f1) and (f2) of this section.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the informational meeting in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public informational meeting. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public informational meeting. In addition, notice shall be mailed at least four weeks prior to date of the informational meeting by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the informational meeting. Failure to comply with the mailing requirements of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with. If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public informational meeting on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notices shall certify that fact to the governing board.

(c) Action Prior to Informational Meeting. — At least 30 days before the date of the public informational meeting, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk, at least 30 days before the public informational meeting, a legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed that it has identified.

(c1) Public Informational Meeting. — At the public informational meeting a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(d) Public Hearing. — At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-48 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)b found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 70 days nor more than 400 days from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. — Except as provided in subsection (f1) of this section, from and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this Part. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(f1) Property Subject to Present-Use Value Appraisal. — If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that on the effective date of annexation is:

(1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or

(2) Land that:

a. Was on the date of the resolution of intent for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and

b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision the annexation becomes effective as to that property pursuant to subsection (f2) of this section.

(f2) Effective Date of Annexation for Certain Property. — Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city.

(g) Simultaneous Annexation Proceedings. — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), for any required service other than water and sewer services such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

If, not earlier than 24 months from the effective date of the annexation, and not later than 27 months from the effective date of the annexation, any person owning property in the annexed area can show that the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and if construction has not been completed within two years of the effective date of the annexation, relief may also be granted by the superior court by an order to the municipality to complete such lines and outfalls within a certain time. Similar relief may be granted by the superior court to any owner of property who made a timely request for a water or sewer line, or both, pursuant to G.S. 160A-47(3)b and such lines have not been completed within two years from the effective date of annexation in accordance with applicable city policies and through no fault of the owner, if such owner petitions for such relief not earlier than 24 months following the effective date of annexation and not later than 27 months following the effective date of annexation.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation and included a statement in the resolution notifying persons subject to the annexation of their rights under subsections (f1) and (f2) of this section; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than 60 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars ($100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars ($10,000,000) and the petitioner's tax levy was one thousand dollars ($1,000), the amount of release or refund shall be ten dollars ($10.00).

(*l*) If a city fails to deliver police protection, fire protection, solid waste or street maintenance services as provided for in G.S. 160A-47(3)a. within 60 days after the effective date of the annexation, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city for taxes that have been levied as of the end of the 60-day period, if the petition is filed not more than 90 days after the expiration of the 60-day period. If the Local Government Commission finds that services were not extended by the end of the 60-day period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after extension of the municipal services. (1959, c. 1009, s. 5; 1973, c. 426, s. 74; 1975, c. 576, s. 4; 1977, c. 517, s. 6; 1983, c. 636, ss. 1, 3, 5, 6, 12-14, 37; c. 768, s. 25; 1985, c. 384, s. 1; 1987, c. 44, s. 2; 1989, c. 598, s. 12; 1998-150, s. 15; 2006-162, s. 21; 2006-264, s. 18(a).)

Editor's Note. —
Session Laws 2006-264, s. 18(a), which made identical changes as those in Session Laws 2006-162, s. 21, was repealed upon the passage of Session Laws 2006-162, pursuant to the terms of Session Laws 2006-264, s. 18(b).

Effect of Amendments. — Session Laws 2006-162, s. 21, effective July 24, 2006, substituted "G.S. 105-277.4" for "G.S. 105-227.4" in the first sentence in subdivision (f2)(2).

CASE NOTES

City Charter Superseded by State Statute. — Summary judgment was properly awarded to a city and its officials in an action by property owners challenging an annexation because, pursuant to G.S. 160A-3(c), the statutory provision establishing involuntary annexations, G.S. 160A-49, superseded a city charter provision permitting only voluntary annexations. Brown v. City of Winston-Salem, 171 N.C. App. 266, 614 S.E.2d 599, 2005 N.C. App. LEXIS 1266 (2005).

§ 160A-49.3. Contract with private solid waste collection firms.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the resolution of intent or resolution of consideration was providing solid waste collection services in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still providing such services, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

(1) Subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(2) Contacted the city clerk pursuant to public notice published by the city, pursuant to G.S. 160A-49(b), at least 10 days before the hearing and provided to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) At least four weeks prior to the date of the informational meeting, the city shall provide written notice of the resolution of intent to all firms serving the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

(1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;
(2) A requirement that the firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;
(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the firms, or by the city as to customers not served by the firms;
(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;
(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;
(6) Performance standards, not exceeding city standards existing at the time of notice published pursuant to G.S. 160A-49(b) with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;
(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the firm under this subsection, the matters shall be determined by the Local Government Commission.

(e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which a resolution of intent is adopted on or after January 1, 2007.

(g) The firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than 30 days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. — A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenues shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. — A private solid waste collection firm. (1985, c. 610, s. 4; 1987, c. 827, s. 1; 1989, c. 598, s. 9; 1998-150, s. 17; 2006-193, s. 2; 2006-259, s. 53.)

Effect of Amendments. — Session Laws 2006-193, s. 2, applicable to annexations for which a resolution of intent is adopted on or after January 1, 2007, rewrote subsections (a) and (b); added subsections (a1), (a2) and (i); deleted "private" preceding "firm" and "firms" throughout subsections (c), (d) and (g); substituted "in writing, delivered by certified mail to the firm in question with 30 days to cure" for "for" in subdivision (c)(5); inserted "existing at the time of notice published pursuant to G.S. 160A-49(b)" in subdivision (c)(6); substituted "the" for "such" near the end of subsection (d); deleted subsections (e) and (f); and substituted "30 days" for "10 business days" twice in subsection (h).

Session Laws 2006-259, s. 53, effective August 23, 2006, substituted "file" for "fill" near the beginning of subsection (a2).

§ 160A-50. Appeal.

CASE NOTES

I. In General.
II. Review by Superior Court.
III. Review by Court of Appeals.

I. IN GENERAL.

Denial of Motion to Intervene Was Proper. — Denial of a corporation's motion to intervene in a case seeking review of an annexation ordinance was proper, since the corporation failed to comply with G.S. 160A-50 procedures by moving to intervene six months after the ordinance was adopted; intervention was also improper under G.S. 1A-1-24, due to the facts that the motion was filed after judgment approving a settlement was entered and that the proposed intervention would have prejudiced the original parties by destroying their settlement. Gates Four Homeowners Ass'n v. N.C. Municipality, 170 N.C. App. 688, 613 S.E.2d 55, 2005 N.C. App. LEXIS 1088 (2005).

Order compelling discovery was generally not immediately appealable; while G.S. 160A-50 contemplated an expedited hearing procedure, where the challengers in an annexation case did not appear concerned with an expedited hearing, and the most significant portion of the delay in the matter was due to the challengers' refusal to answer discovery, and in getting the matter before the appellate court, the challengers failed to show that a substantial right was affected, and an order compelling discovery was not immediately appealable. Arnold v. City of Asheville, 169 N.C. App. 451, 610 S.E.2d 280, 2005 N.C. App. LEXIS 616 (2005).

Applied in Brown v. City of Winston-Salem, — N.C. App. —, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

II. REVIEW BY SUPERIOR COURT.

Time Limit for Seeking Review Not Extended by Settlement Agreement. — As petitioners failed to seek judicial review of an annexation ordinance within 60 days as required by G.S. 160A-50(a), their action was time-barred. A prior settlement between the city and another party that did timely file for review did not require a remand to city council or allow petitioners a new 60-day period to seek review. Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

Intervention in Petition for Review. — Petitioners' motion under G.S. 1A-1-24(a) to intervene in another party's petition for review of an annexation ordinance was properly denied, because G.S. 1A-1-24(a) does not apply to appeals of annexation ordinances under G.S. 160A-50(a). Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

Appellants' motion to intervene in another party's petition for review of an annexation ordinance was properly denied because, even assuming G.S. 1A-1-24(a) applied to appeals of annexation ordinances under G.S. 160A-50(a), judgment had already entered, intervention would have prejudiced the city and the other party, and appellants did not offer a legitimate reason for the delay. Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

Settlement of Annexation Disputes. — Settlements of annexation disputes under G.S. 160A-50(m) are not "actions having the effect of an ordinance" under G.S. 160A-75, but are a method of dispute resolution in the annexation process; therefore, there is no need to send the matter back to city council after a settlement is reached. Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

III. REVIEW BY COURT OF APPEALS.

Right to Appeal. —

Trial court properly granted the city's motion to dismiss the military servicemembers' challenge to the annexation of approximately 28 square miles of land and over 40,000 residents as time-barred because the federal Servicemembers Civil Relief Act, specifically 50 U.S.C.S. app. § 525, did not contain a plain statement showing an unmistakably clear intent to intrude upon North Carolina's state sovereignty in the area of annexations, where: (1) the word "annexation" appeared nowhere in the statute; (2) the Act's fundamental purpose was to address personal financial claims, not large-scale government action; and (3) the servicemembers failed to cite a single case which applied the Act to non-personal claims challenging large-scale government action. Kegley v. City of Fayetteville, 170 N.C. App. 656, 613 S.E.2d 696, 2005 N.C. App. LEXIS 1073 (2005), review denied, — N.C. —, 619 S.E.2d 508 (2005), cert. denied, — U.S. —, 126 S. Ct. 1147, 163 L. Ed. 2d 1001 (2006).

Remand Required. — Because a trial court failed to make the appropriate finding that a city's annexation ordinance was not subject to correction upon remand before declaring it null and void, an appellate court remanded the case to the trial court for it to make the appropriate findings to support one of the statutory grounds under G.S. 160A-50(g). Fix v. City of Eden, — N.C. App. —, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

§ 160A-54. Population and land estimates.

CASE NOTES

Evidence Not Admissible to Challenge City's Methodology. — Where petitioners challenged a city annexation ordinances, the trial court properly ruled that their spreadsheets could not be offered to show that the city's methodology was not calculated to provide reasonably accurate results, as required by G.S. 160A-54, because they presented no expert testimony about the spreadsheets, and testimony of the city's principal planner was insufficient to establish a foundation for their admissibility. Brown v. City of Winston-Salem, — N.C. App. —, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

Petitioners Failed to Meet Burden to Show Inaccuracy of City's Methodology. — Petitioners challenging a city's annexation ordinances failed to show the city misclassified the lots to be annexed or that the county tax maps it relied on were inaccurate. As they offered no reliable evidence that the city's methodology was inaccurate and not calculated to provide reasonably accurate results, as required by G.S. 106A-54, the ordinances were properly deemed valid. Brown v. City of Winston-Salem, — N.C. App. —, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

Applied in Fix v. City of Eden, — N.C. App. —, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58.1. Petition for annexation; standards.

(a) Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, a city may annex an area not contiguous to its primary corporate limits when the area meets the standards set out in subsection (b) of this section. The petition need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city, except as set forth in subsection (b2) of this section.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Creswell, Dallas, Dobson, Fuquay-Varina, Garner, Godwin, Grimesland, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, Yadkinville, and Zebulon.

(b1) Repealed by Session Laws 2004-203, ss. 13(a) and 13(d), effective August 17, 2004.

(b2) A city may annex a noncontiguous area that does not meet the standard set out in subdivision (b)(2) of this section if the city has entered into an annexation agreement pursuant to Part 6 of this Article with the city to which a point on the proposed satellite corporate limits is closer and the agreement states that the other city will not annex the area but does not say that the annexing city will not annex the area. The annexing city shall comply with all other requirements of this section.

(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation with relation to the primary corporate limits of the annexing city. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition.

(d) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested rights shall be terminated. (1973, c. 1173, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 4; 1997-2, s. 1; 2001-37, s. 1; 2001-72, s. 1; 2001-438, s. 1; 2002-121, s. 1; 2003-30, s. 1; 2004-203, s. 13(a), (c); 2004-57, s. 1; 2004-99, s. 1; 2004-203, ss. 13(a)-(d); 2005-52, s. 1; 2005-71, s. 1; 2005-79, s. 1; 2005-173, s. 1; 2005-433, s. 9; 2006-62, s. 1; 2006-122, s. 1; 2006-130, s. 1.)

Effect of Amendments. —

Session Laws 2006-62, s. 1, effective July 6, 2006, inserted "Princeton" and "Smithfield" in the second paragraph of subdivision (b)(5).

Session Laws 2006-122, s. 1, effective July 18, 2006, inserted "Benson", "Burgaw", "Clayton", "Dobson", and "Yadkinville" in the second paragraph of subdivision (b)(5).

Session Laws 2006-130, s. 1, effective July 19, 2006, inserted "Grimesland", "Stem" and "Stovall" in the second paragraph of subdivision (b)(5).

Part 5. Property Tax Liability of Newly Annexed Territory.

§ 160A-58.10. Tax of newly annexed territory.

Editor's Note. — Session Laws 2006-72, s. 1, provides: "A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the due date and accrual of interest, G.S. 105-380 and G.S. 105-381 regarding the release, refund, and compromise of taxes, and G.S. 160A-58.10 regarding the taxation of newly annexed property, property taxes for the partial fiscal year October 1, 2005, through June 30, 2006, shall be collected over a three-year period with one-third due and payable on September 1, 2006, one-third due and payable on September 1, 2007, and the remaining one-third due and payable on September 1, 2008. The resolution may provide that interest accrues on unpaid property taxes only to the extent that the property taxes have become due and payable under the payment schedule set out in the resolution. To the extent property taxes are due and payable pursuant to a resolution adopted under this act, interest accruing on taxes that remain unpaid shall be computed according to the schedule stated in G.S. 105-360. A resolution adopted pursuant to this act applies only to taxes for the partial fiscal year October 1, 2005, through June 30, 2006, on property located in an area that was annexed between January 1, 2003, and January 1, 2006, and for which effective date of the annexation was set by judicial order."

Session Laws 2006-72, s. 2, provides: "If a resolution adopted by a taxing unit's governing body pursuant to this act delays the due date, accrual of interest, or both for any property taxes, the tax collector's obligations under G.S. 160A-58.10 and G.S. 105-360 with respect to those taxes are delayed to the same extent."

ARTICLE 5.

Form of Government.

Part 3. Organization and Procedures of the Council.

§ 160A-75. Voting.

CASE NOTES

Settlement of Annexation Disputes. — Settlements of annexation disputes under G.S. 160A-50(m) are not "actions having the effect of an ordinance" under G.S. 160A-75, but are a method of dispute resolution in the annexation process; therefore, there is no need to send the matter back to city council after a settlement is reached. Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

ARTICLE 7.

Administrative Offices.

Part 4. Personnel.

§ 160A-162. Compensation.

CASE NOTES

Policy as to Payment of Employees Must Have Council Approval. —

As the evidence before the trial court on a motion for summary judgment filed by a police department did not raise a genuine issue of material fact as to whether numerous current police officers were entitled to a pay increase, because the city council had not approved any pay raise for existing employees of the police department with post-secondary degrees, the trial court properly granted summary judgment in favor of the department and against the contesting officers. City of Asheville v. Bowman, 172 N.C. App. 586, 616 S.E.2d 669, 2005 N.C. App. LEXIS 1808 (2005).

ARTICLE 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

CASE NOTES

I. In General.

I. IN GENERAL.

General Laws Prevail over Ordinances. — In determining whether the General Assembly intended to provide statewide regulation of the land application of biosolids to the exclusion of local regulation, the court must ascertain if the General Assembly has shown a clear legislative intent to provide a complete and integrated regulatory scheme. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156, 2005 N.C. App. LEXIS 906 (2005).

§ 160A-175. Enforcement of ordinances.

CASE NOTES

Applied in Shavitz v. City of High Point, — N.C. App. —, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006).

§ 160A-176. Ordinances effective on city property outside limits.

CASE NOTES

City's Code Not Applicable Outside of City Limits. — Trial court's order requiring a corporation to pay a city for water the corporation drew from its own well was reversed as, although under G.S. 160A-176, the city could have made its ordinances applicable on rights of way, Lumberton, N.C., Code of Ordinances § 23-22(a), (b), and (d) were only applicable to businesses within the city limits; the corporation's facility was outside of the city limits. City of Lumberton v. United States Cold Storage, Inc., — N.C. App. —, 631 S.E.2d 165, 2006 N.C. App. LEXIS 1397 (2006).

Article 9.

Taxation.

§ 160A-211. Privilege license taxes.

(a) Authority. — Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements — Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements — Outdoor theatres.
G.S. 105-37	Amusements — Moving pictures — Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.

G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. — A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) Prohibition. — A city may not impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

(d) Repealed by Session Laws 2006-151, s. 12, effective January 1, 2007. (R.C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C.S., s. 2677; 1949, c. 933; 1971, c. 698, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 23; 1998-22, s. 12; 2001-430, s. 17; 2006-151, s. 12.)

Editor's Note. —

Session Laws 2006-151, s. 20, is a severability clause.

Effect of Amendments. — Session Laws 2006-151, s. 12, effective January 1, 2007, rewrote subsection (c); and deleted subsection (d), which read: "Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S 105-164.4(a)(4c)."

§ 160A-214: Repealed by Session Laws 2006-151, s. 13, effective January 1, 2007.

§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. — This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. — A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. — Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. — The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. — A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. — A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. — The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Burgaw, Carolina Beach, Carrboro, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties. (1997-361, s. 4; 1997-364, s. 5; 1997-410, s. 3; 1997-447, s. 2; 1998-112, s. 4; 1999-258, s. 3; 1999-302, s. 2; 2000-103, s. 9; 2001-11, s. 2; 2001-365, s. 3; 2001-434, s. 9; 2001-439, s. 18.1; 2002-94, s. 4; 2002-95, s. 3; 2002-138, s. 2; 2002-139, s. 2; 2002-159, s. 62; 2003-281, s. 14; 2004-105, s. 3;

2004-170, ss. 36(b), 42(b); 2004-199, s. 60(b); 2005-16, s. 3; 2005-46, s. 2.3; 2005-49, s. 3; 2005-220, s. 5; 2005-233, s. 6.2; 2005-435, s. 45; 2006-118, s. 4; 2006-120, ss. 8.2, 10.2; 2006-148, s. 3; 2006-162, s. 20(b); 2006-164, s. 3; 2006-167, s. 3; 2006-264, ss. 19, 81(a).)

Editor's Note. — Session Laws 2006-120, s. 8.2, had inserted "Boiling Springs" in subsection (g); however, that insertion of "Boiling Springs" was repealed, pursuant to the terms of Session Laws 2006-120, s. 10.2, upon the passage of Session Laws 2006-148, s. 3, which also inserted "Boiling Springs" in subsection (g).

Effect of Amendments. —

Session Laws 2005-16, s. 3, as amended by Session Laws 2006-264, s. 81(a), effective July 1, 2005, inserted "Elizabeth City" in subsection (g).

Session Laws 2006-118, s. 4, effective July 13, 2006, in subsection (g), inserted "Dobson, Elkin" and inserted "Pilot Mountain".

Session Laws 2006-120, s. 8.2, effective July 17, 2006, in subsection (g), inserted "Benson" and "Kenly".

Session Laws 2006-148, s. 3, effective July 20, 2006, in subsection (g), inserted "Boiling Springs" and "Tryon".

Session Laws 2006-162, s. 20(b), effective July 24, 2006, substituted "20th day" for "15th day" in the second sentence in subsection (d).

Session Laws 2006-164, s. 3, effective July 26, 2006, inserted "Ahoskie" in subsection (g).

Session Laws 2006-167, s. 3, effective July 27, 2006, inserted "Burgaw" in subsection (g).

Session Laws 2006-264, s. 19, effective August 27, 2006, in subsection (g), inserted "Jonesville" and made minor punctuation changes.

ARTICLE 11.

Eminent Domain.

§ 160A-240.1. Power to acquire property.

CASE NOTES

Power Not Restricted Where Land and City in Same County. — Summary judgment was properly entered in a declaratory action regarding the applicability of G.S. 153A-15(b) because a condemnation action by a city in order to facilitate the construction of a water supply and distribution facility did not require any approval since the city and the land were located in the same county; moreover, the evidence showed that the real and substantial benefits of the condemnation accrued to the city in question, and not other parties in the case that were located in different counties. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

Proper Exercise of Police Power. — In condemnation proceeding brought pursuant to city's power of eminent domain under G.S. 160A-240.1, partial summary judgment was properly granted precluding property owners from recovering for diminution in value caused by the city's construction of a median restricting access to lanes in only one direction of travel; the separation of lanes of traffic was an exercise of police power, and the means used to accomplish the legitimate objective were reasonable in light of the fact that the owners still had free ingress and egress to their property, and injury to property caused by such an exercise of police power was not compensable. City of Concord v. Stafford, 173 N.C. App. 201, 618 S.E.2d 276, 2005 N.C. App. LEXIS 1915 (2005), cert. dismissed, — N.C. —, 625 S.E.2d 784 (2005), cert. denied, — N.C. —, 625 S.E.2d 785 (2005).

ARTICLE 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

Local Modification. — (As to Article 12) Bladen: 1993 (Reg. Sess., 1994), c. 721, ss. 1, 2; (As to Article 12) Burke: 1987 (Reg. Sess., 1988), c. 1002; Burlington: 1989, c. 6; Cherokee:

1983 (Reg. Sess., 1984), c. 939; Clay: 1983, c. 353; (As to Article 12) Cleveland: 1995, c. 201, s. 1; Cumberland: 1983 (Reg. Sess., 1984), c. 1079; Craven: 1985, c. 13; Dare: 1987, c. 241; Duplin: 1989, c. 411, ss. 1.1, 1.2; 1989 (Reg. Sess., 1990), c. 1006, s. 1; Edgecombe: 1981, c. 971; Gaston: 1983, c. 405; Graham and Graham County Industrial Development Authority: 1985 (Reg. Sess., 1986), c. 824; Halifax: 1987, c. 238; Harnett: 1985, c. 16; Haywood and Jackson: 1981, c. 137; Johnston: 1989, c. 597, s. 1; Jones: 1983 (Reg. Sess., 1984), c. 960; Lee: 1987 (Reg. Sess., 1988), c. 933; (As to Article 12) 2002-81, s. 1; Lenoir: 1981, c. 176; 1987 (Reg. Sess., 1988), c. 1002; 2000-48, s. 2; Macon: 1979, c. 235; 1989 (Reg. Sess., 1990), c. 998; Madison: 1981, c. 174; McDowell: 1987 (Reg. Sess., 1988), c. 909; 1989 (Reg. Sess., 1990), c. 833, s. 2; Pamlico: 1985, c. 386; 1987, c. 214; (As to Article 12) Pasquotank: 1979, c. 129; 1991, c. 61; Pender: 1989, c. 503, s. 1; 1989 (Reg. Sess., 1990), c. 847, s. 1; 1993, c. 52, s. 1; Pitt: 1983 (Reg. Sess., 1984), c. 942; Rowan: 1987, c. 157; Sampson: 1985 (Reg. Sess., 1986), c. 894; c. 943, s. 2; (As to Article 12) Sanford: 1995, c. 154, s. 1; Scotland: 1987, c. 57; Swain: 1981, c. 137; Transylvania: 1989, c. 4; (As to Article 12) Tyrrell: 1987, c. 9; 2001-32; Washington: 1979, 2nd Sess., c. 1120; 1985, c. 134; Wayne: 1987 (Reg. Sess., 1988), c. 1006, s. 7; (As to Article 12) 1997-170, s. 1; 2004-94; city of Asheboro: 1987, c. 593; city of Asheville: 1979, c. 317; 1981, c. 631; 1985, c. 721; city of Bessemer City: 1995 (Reg. Sess., 1996), c. 563, s. 1; city of Brevard: 1985, c. 79; 1987 (Reg. Sess., 1988), c. 905; 1999-8, s. 1; (As to Article 12) 1995 (Reg. Sess., 1996), c. 671, s. 1; city of Burlington: 1985 (Reg. Sess., 1986), c. 829; 1987, c. 121; 1989 (Reg. Sess., 1990), cc. 831, 832; (As to Article 12) 1991, c. 198; 1993, c. 276, s. 1; c. 277, s. 3; 1995 (Reg. Sess., 1996) c. 610, s. 1; 1997-445, s. 2; (As to Article 12) 2001-190, s. 4; city of Charlotte: (As to Article 12) 1981, c. 55; 1983, c. 92; 2000-26, s. 1; city of Clinton: 1985 (Reg. Sess., 1986), c. 943, s. 2; city of Conover: (As to Article 12) 2006-165, s. 1; city of Durham: 1987, c. 756, s. 4; city of Elizabeth City: 1979, c. 129; (As to Article 12) city of Goldsboro: 2004-94; city of Kinston: 1981, c. 176; 1987 (Reg. Sess., 1988), c. 918; c. 1002; (As to Article 12) 1993, c. 265, s. 1; 2000-48, s. 2; city of Lenoir: 1985, c. 493; (As to Article 12) city of Lincolnton: 1995, c. 57, s. 1; city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; city of Morganton: 1987, c. 265, s. 2; 1987 (Reg. Sess., 1988), c. 1002; city of Mount Airy: 1985, c. 282; 1998-82; 2003-281, s. 1 (as to Article 12); city of New Bern: 1998-29; city of Oxford: 1989 (Reg. Sess., 1990), c. 833, s. 1; city of Raleigh: 1997-39, s. 1; city of Roanoke Rapids: 1997-39, s. 1; (As to Article 12) 1991, c. 197; 2003-43, s. 1; city of Salisbury: 1987, c. 205, s. 1; city of Shelby: 1999-5, s. 1; city of Statesville: 1987, c. 265, s. 2; 1989, c. 241, s. 1; (As to Article 12) city of Thomasville: 2002-53, s. 1; city of Washington: 1983 (Reg. Sess., 1984), c. 941; (As to Article 12) 1993, c. 133, s. 1; city of Whiteville: 1987 (Reg. Sess., 1988), c. 1018, s. 1; city of Wilson: 1983, c. 748; town of Ayden: 1991, c. 58; town of Black Creek: 1985, c. 286; town of Cerro Gordo: 1995 (Reg. Sess. 1996), c. 708; town of Carrboro: 1987, c. 476, s. 1; 1989, c. 97, s. 1; town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 11.1; town of Elkin: 1997-130; 1997-131; (As to Article 12) town of Fairmont: 2001-2; (As to Article 12) town of Faison: 1998-40, s. 3; (As to Article 12) town of Farmville: 2005-29, s. 1; town of Garner: 1989, c. 270, s. 1; town of Greenevers: 1985, c. 34; town of Kernersville: 1987 (Reg. Sess., 1988), c. 920; 1989 (Reg. Sess., 1990), c. 983; (As to Article 12) 2001-80; 2005-433, s. 7(a), (b) (as to Article 12); (As to Article 12) town of Maxton: 1995 (Reg. Sess., 1996), c. 576, s. 1; town of Pilot Mountain: 1985, c. 291, ss. 6, 8; (as to Article 12) town of Pinebluff: 2003-48, s. 1, as amended by 2004-53, s. 1; (as to Article 12) town of Red Springs: 1995, c. 203, s. 1; town of Tabor City: 1987 (Reg. Sess., 1988), c. 919; town of Tryon: 1987, c. 56; town of Wake Forest: 1985, c. 195; (As to Article 12) town of Wallace: 1998-40, s. 1; town of Waynesville: 1997-139, s. 1; village of Pinehurst: 1989, c. 375, ss. 1, 1.1; (As to Article 12) Asheville-Buncombe Technical Community College: 2000-99, s. 1; (As to Article 12) Bladen County Board of Education: 2003-122, ss. 1, 2; (As to Article 12) Burlington City Board of Education: 1993 (Reg. Sess., 1994), c. 639, s. 1; (As to Article 12) Clinton City Board of Education: 2004-69; Clinton-Sampson Agri-Civic Center Commission: 1985 (Reg. Sess., 1986), c. 943, s. 2; Foothills Regional Airport Authority: 2000-9, s. 7; (As to Article 12) Hertford County Board of Education: 2006-86, ss. 1-3; (As to Article 12) High Point Alcoholic Beverage Control Board: 2006-89, s. 1; (As to Article 12) Iredell-Statesville Schools: 2006, c. 45, ss. 1, 1.1; Mayland Community College: 2003-320, s. 1, as amended by 2004-203, s. 81, and as amended by 2006-5, s. 1; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917; Pender County Board of Education: 1996, 2nd Ex. Sess., c. 16, s. 1; (As to Article 12) Wilkes County Board of Education: 2001-58; Hertford County Board of Education: 2006-86, ss. 1-3 (as to construction, provision or maintenance of affordable rental housing on property owned or leased by Hertford County Board of Education and rent of housing units owned by the Board with priority for teachers); Moore County Board of Education: 1999-176, s. 1 (use of buses for tournament June 12, 1999-June 20, 1999); 2004-68.

§ 160A-270. Public auction.

(a) Real Property. — When it is proposed to sell real property at public auction, the council shall first adopt a resolution authorizing the sale, describing the property to be sold, specifying the date, time, place, and terms of sale, and stating that any offer or bid must be accepted and confirmed by the council before the sale will be effective. The resolution may, but need not, require the highest bidder at the sale to make a bid deposit in a specified amount. The council shall then publish a notice of the sale at least once and not less than 30 days before the sale. The notice shall contain a general description of the land sufficient to identify it, the terms of the sale, and a reference to the authorizing resolution. After bids have been received, the highest bid shall be reported to the council, and the council shall accept or reject it within 30 days thereafter. If the bid is rejected, the council may readvertise the property for sale.

(b) Personal Property. — When it is proposed to sell personal property at public auction, the council shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property at public auction. The resolution or order shall identify the property to be sold and set out the date, time, place, and terms of the sale. The resolution or order (or a notice summarizing its contents) shall be published at least once and not less than 10 days before the date of the auction.

(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular auction or for all auctions under this subsection shall be approved by the governing board of the political subdivision. Except as provided in this subsection, all requirements of subsections (a) and (b) of this section apply to electronic auctions. (1971, c. 698, s. 1; 1973, c. 426, s. 43; 2001-328, s. 5; 2005-227, s. 4; 2006-264, s. 74.)

Effect of Amendments. — Session Laws 2006-264, s. 74, effective August 27, 2006, in subsection (c), substituted "auction" for "contract" and "auctions" for "contracts" in the next to last sentence.

§ 160A-272. Lease or rental of property.

Local Modification. — Cabarrus: 2000-88, s. 2; Columbus: 1995 (Reg. Sess., 1996), c. 709, s. 1; Duplin: 1987, c. 50; 1987 (Reg. Sess., 1988), c. 1006, s. 6; Durham: 2005-172, s. 1; Lincoln: 1983 (Reg. Sess., 1984), c. 944; 1989, c. 411, s. 1; Montgomery: 2001-485, s. 3.1; Pasquotank: 1991, c. 382; Sampson: 1985 (Reg. Sess., 1986), c. 943, s. 2; Tyrrell: 1987, c. 781, s. 1.1; Wake: 1979, c. 275; Wilson: 1983, c. 239; city of Asheboro: 1989 (Reg. Sess., 1990), c. 867; city of Charlotte: 2000-26, s. 1; city of Concord: 1985, c. 355, as amended by 2000-88, s. 2; city of Gastonia: 1991, c. 557, s. 1; city of Mount Airy: 2003-281, s. 1; city of Salisbury: 1987, c. 205, s. 1; city of Statesville: 1983 (Reg. Sess., 1984), c. 940; 1987 (Reg. Sess., 1988), c. 883; town of Beaufort: 1979, c. 371; town of Columbia: 1987, c. 781, s. 1.1; town of Hope Mills: 1985, c. 285; town of Kenansville: 1987, c. 50; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Matthews: 2001-102; town of Newport: 1998-30; Carteret County Board of Education: 2002-35, s. 1 (as to lease of property to Boys and Girls Club); Duplin County Board of Education: 1987, c. 50; Elizabeth City—Pasquotank County Airport Authority: 1991, c. 26; Goldsboro-Wayne Airport Authority: 1987 (Reg. Sess., 1988), c. 1006, s. 5; Warren Field Airport Commission: 2002-84, s. 1.

Editor's Note. — Session Laws 2006-5, s. 1, amended Session Laws 2003-320, s. 1, as amended by Session Laws 2004-203, s. 81, by deleting the local modification regarding Mayland Community College.

ARTICLE 13.

Law Enforcement.

§ 160A-288. Cooperation between law-enforcement agencies.

(a) In accordance with rules, policies, or guidelines officially adopted by the governing body of the city or county by which he is employed, and subject to any conditions or restrictions included therein, the head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the laws of North Carolina if so requested in writing by the head of the requesting agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the requesting agency (including in an undercover capacity) and lending equipment and supplies. While working with the requesting agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency in addition to those he normally possesses. While on duty with the requesting agency, he shall be subject to the lawful operational commands of his superior officers in the requesting agency, but he shall for personnel and administrative purposes, remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workers' compensation and the same benefits when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of a law-enforcement agency including the chief of police of a local department, chief of police of county police department, and the sheriff of a county, or an officer of one of the above named agencies to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Law-enforcement agency" means only a municipal police department, a county police department, or a sheriff's department. All other State and local agencies are exempted from the provisions of this section.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers.

(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 115D-21.1(a) or G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes; and

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2); and

(4) Butner Public Safety. (1967, c. 846; 1971, c. 698, s.1; c. 896, s.4; 1977, c. 534; 1981, c. 93, s. 2; 1987, c. 671, s. 4; 1989, c. 518, s. 2; 1991, c. 636, s. 3; 1991 (Reg. Sess., 1992), c. 1043, s. 6; 1997-143, s. 1; 1999-68, s. 4; 2005-231, s. 8; 2006-159, s. 4.)

Cross References. — As to the employment of special police officers for the territory of the Butner Advisory Council Jurisdiction, see G.S. 122C-408.

Effect of Amendments. —

Session Laws 2006-159, s. 4, effective July 23, 2006, in subdivision (d)(3), added "and" at the end and made a minor punctuation change; and added subdivision (d)(4).

§ 160A-288.2. Assistance to State law-enforcement agencies.

(a) In accordance with rules, policies, or guidelines officially adopted by the governing body of the city or county by which he is employed, and subject to any conditions or restrictions included therein, the head of any local law-enforcement agency may temporarily provide assistance to a State law-enforcement agency in enforcing the laws of North Carolina if so requested in writing by the head of the State agency. The assistance may comprise allowing officers of the local agency to work temporarily with officers of the State agency (including in an undercover capacity) and lending equipment and supplies. While working with the State agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities (including those relating to the defense of civil actions and the payment of judgments) as the officers of the State agency in addition to those he normally possesses. While on duty with the State agency, he shall be subject to the lawful operational commands of his superior officers in the State agency, but he shall for personnel and administrative purposes, remain under the control of the local agency, including for purposes of pay. He shall furthermore be entitled to workers' compensation and the same benefits when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of any State or local law-enforcement agency including the chief of police of a local department, chief of police of a county police department, and the sheriff of a county, or an officer of the agency to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Local law-enforcement agency" means any municipal police department, a county police department, or a sheriff's department.

(3) "State law-enforcement agency" means any State agency, force, department, or unit responsible for enforcing criminal laws.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers.

(d) For the purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a), and G.S. 116-40.5(a).

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes.

(3) Butner Public Safety. (1981, c. 878; 1989, c. 518, s. 3; 1991, c. 636, s. 3; 1991 (Reg. Sess., 1992), c. 1043, s. 7; 2005-231, s. 9; 2006-159, s. 5.)

Cross References. — As to the employment of special police officers for the territory of the Butner Advisory Council Jurisdiction, see G.S. 122C-408.

Effect of Amendments. — Session Laws 2006-159, s. 5, effective July 23, 2006, added "G.S. 116-40.5(a)" at the end of subdivision (d)(1); and added subdivision (d)(3).

§ 160A-289.2. Neighborhood crime watch programs.

A city may establish neighborhood crime watch programs within the city to encourage residents and business owners to promote citizen involvement in securing homes, businesses, and personal property against criminal activity and to report suspicious activities to law enforcement officials. (2006-181, s. 2.)

Cross References. — As to harassment of participants in neighborhood crime watch programs, see G.S. 14-226.2. As to the establishment of neighborhood crime watch programs, see G.S. 153A-212.2.

Editor's Note. — Session Laws 2006-181, s. 4, made this section effective August 1, 2006.

ARTICLE 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines.

(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain.

(4) The power to close any street or alley either permanently or temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface. To the extent a municipality is authorized under applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273.

(a1) A city with a population of 250,000 or over according to the most recent decennial federal census may also exercise the power granted by subdivision (a)(3) of this section within its extraterritorial planning jurisdiction. Before a city makes improvements under this subsection, it shall enter into a memorandum of understanding with the Department of Transportation to provide for maintenance.

(b) Repealed by Session Laws 1991, c. 530, s. 6, effective January 1, 1992. (1917, c. 136, subch. 5, s. 1; subch. 10, s. 1; 1919, cc. 136, 237; C.S., ss. 2787, 2793; 1925, c. 200; 1963, c. 986; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1979, c. 598; 1991, c. 530, s. 6; 2001-261, s. 1; 2006-151, s. 14.)

Editor's Note. — Session Laws 2006-151, s. 20, is a severability clause.

Effect of Amendments. — Session Laws 2006-151, s. 14, effective January 1, 2007, in subsection (a), made minor punctuation changes throughout and substituted "to all of the following" for "to" at the end of the introductory paragraph; added the last sentence in subdivision (a)(6); and deleted "and" from the end of subdivision (a)(7).

§ 160A-299. Procedure for permanently closing streets and alleys.

CASE NOTES

Separation of Powers Clause not Violated. — G.S. 160A-299(b) did not deprive a home owner of his right to a fair hearing or violate the Separation of Powers Clause of the North Carolina Constitution in his appeal from a town council order closing a road because he had the opportunity to test, rebut, and explain evidence presented to the council at three public hearings held on the road closure over a two-month period; these hearings were the proper place for him to present evidence and to rebut any evidence contrary to his position. Houston v. Town of Chapel Hill, — N.C. App. —, 630 S.E.2d 249, 2006 N.C. App. LEXIS 1199 (2006).

Evidentiary Hearing Not Required on Appeal. — Homeowner was not entitled to an evidentiary hearing in his appeal from a town council's road closure order because the clear and unambiguous language of G.S. 160A-299(b) directed the superior court to decide all issues except the council's compliance with procedural issues on the record before the town council, and the owner did not challenge the council's procedural compliance; the record evidence supported the council's findings, and the superior court properly affirmed its order after finding that it complied with G.S. 160A-299. Houston v. Town of Chapel Hill, — N.C. App. —, 630 S.E.2d 249, 2006 N.C. App. LEXIS 1199 (2006).

§ 160A-300.1. Use of traffic control photographic systems.

Editor's Note. —

Session Laws 2006-189, s. 2, provides that: "The Legislative Research Commission may study the impact of the various decisions of the North Carolina courts on the definition of clear proceeds as it relates to the funding and operation of traffic control photographic systems by cities and towns in the State. The Commission may recommend to the General Assembly statutory changes that define clear proceeds in a manner that allows their use for the continued operation of these traffic control devices."

CASE NOTES

Use of Assessments. —

County board of education was entitled to funds derived from a city's red light camera program, which program was implemented by an ordinance pursuant to G.S. 160A-300.1(c), as N.C. Const. art. IX, § 7 applied to the civil penalties assessed by the city for violations of the ordinance regarding the failure to stop for a red stoplight. Further, pursuant to G.S. 115C-437, the city was to pay 90 percent of the amount collected by its red light camera program to the board. Shavitz v. City of High Point, — N.C. App. —, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006).

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles and motor vehicles that constitute a safety hazard.

(a) A city may by ordinance prohibit the abandonment of motor vehicles on the public streets or on public or private property within the city, and may enforce any such ordinance by removing and disposing of junked or abandoned motor vehicles according to the procedures prescribed in this section.

(b) A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

(b1) An abandoned motor vehicle is one that:

(1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or

(2) Is left on property owned or operated by the city for longer than 24 hours; or

(3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or

(4) Is left on any public street or highway for longer than seven days.

(b2) A junked motor vehicle is an abandoned motor vehicle that also:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or

(3) **(applicable to most localities)** Is more than five years old and worth less than one hundred dollars ($100.00);

(3a) Is more than five years old and worth less than five hundred dollars ($500.00); this subdivision applies only to the Cities of Belmont, Bessemer City, Cherryville, Gastonia, Henderson and Mount Holly, and the Towns of Ahoskie, Cramerton, Dallas, Farmville, LaGrange, Matthews, Mint Hill, Louisburg, and Stanley; or

(4) Does not display a current license plate.

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(d) Hearing Procedure. — Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city, shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:

a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,

c. Provide for an appeal to district court from that hearing,

d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and

e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(e) Repealed by Session Laws 1983, c. 420, s. 13.

(f) No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(g) Nothing in this section shall apply to any vehicle in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

(h) Repealed by Session Laws 1983, c. 420, s. 13, effective July 1, 1983. (1965, c. 1156; 1967, cc. 1215, 1250; 1971, c. 698, s. 1; 1973, c. 426, s. 50; 1975, c. 716, s. 5; 1983, c. 420, ss. 11-13; 1997-456. s. 27; 2005-10, ss. 1, 3; 2006-15, s. 1; 2006-166, s. 2; 2006-171, s. 1.)

Local Modification. — City of Durham: 1987, c. 755; city of Winston-Salem: 1995, c. 92, s. 1; 2000-104, s. 1; town of Carrboro: 1987, c. 476, s. 1; town of Garner: 1979, c. 270.

Editor's Note. —

Since Session Laws 2005-10, ss. 1, 3, as amended by Session Laws 2006-15, s. 1, and as amended by 2006-166, s. 2, and as amended by Session Laws 2006-171, s. 1, now applies to 10 or more jurisdictions, it has been codified as subdivision (b2)(3a) of this section at the direction of the Revisor of Statutes.

§ 160A-303.2. Regulation of abandonment of junked motor vehicles.

(a) A municipality may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) **(applicable to most localities)** Is more than five years old and appears to be worth less than one hundred dollars ($100.00); [or]

(4) Is more than five years old and appears to be worth less than five hundred dollars ($500.00). This subdivision applies only to the Cities of Belmont, Bessemer City, Cherryville, Gastonia and Mount Holly, and the Towns of Ahoskie, Cramerton, Dallas, Farmville, LaGrange, Mint Hill, Louisburg and Stanley.

(a1) Any junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:

(1) Protection of property values;
(2) Promotion of tourism and other economic development opportunities;
(3) Indirect protection of public health and safety;
(4) Preservation of the character and integrity of the community; and
(5) Promotion of the comfort, happiness, and emotional stability of area residents.

(a2) The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(a3) Hearing Procedure. — Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city shall provide a prior hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:
    a. Provide by contract or ordinance for a schedule of reasonable towing fees,
    b. Provide a procedure for a prompt fair hearing to contest the towing,
    c. Provide for an appeal to district court from that hearing,
    d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
    e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(a4) Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(b) Any ordinance adopted pursuant to this section shall include a prohibition against removing or disposing of any motor vehicle that is used on a regular basis for business or personal use. (1983, c. 841, s. 2; 1985, c. 737, s. 2; 1987, c. 42, s. 2; c. 451, s. 2; 1989, c. 3; c. 743, s. 2; 2005-10, ss. 2, 3; 2006-15, s. 3; 2006-166, s. 2; 2006-171, s. 1.)

Local Modification. — City of Albemarle: 2002-80, s. 1; city of Greenville: 1998-80; 2004-30, s. 1; city of Henderson: 2004-30, s. 1; city of Jacksonville: 2005-25, s. 1 (as to subsection (a)); city of Lumberton: 1995, c. 53, ss. 1, 2; city of Winston-Salem: 2000-104, s. 2; town of Matthews: 2004-30, s. 2; 2005-24, s. 1; town of Waynesville: 2004-30, s. 1.

Editor's Note. —

Since Session Laws 2005-10, ss. 2, 3, as amended by Session Laws 2006-15, s. 1, and as amended by 2006-166, s. 2, and as amended by Session Laws 2006-171, s. 1, now applies to 10 or more jurisdictions, it has been codified as subdivision (a)(4) of this section at the direction of the Revisor of Statutes. The bracketed language at the end of subdivision (a)(3) has also been added at the direction of the Revisor of Statutes.

Article 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

CASE NOTES

Applied in Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 160A-312. Authority to operate public enterprises.

CASE NOTES

V. Extension of Services Outside Corporate Limits.

V. EXTENSION OF SERVICES OUTSIDE CORPORATE LIMITS.

Approval for Condemnation Not Required. — Summary judgment was properly entered in a declaratory action regarding the applicability of G.S. 153A-15(b) because a condemnation action by a city in order to facilitate the construction of a water supply and distribution facility did not require any approval since the city and the land were located in the same county; moreover, the evidence showed that the real and substantial benefits of the condemnation accrued to the city in question, and not other parties in the case that were located in different counties. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 160A-319. Utility franchises.

(a) A city shall have authority to grant upon reasonable terms franchises for a telephone system and any of the enterprises listed in G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise.

(b) For the purposes of this section, "cable television system" means any system or facility that, by means of a master antenna and wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation. "Cable television system" does not include providing master antenna services only to property owned or leased by the same person, firm, or corporation, nor communication services rendered to a cable television system by a public utility that is regulated by the North Carolina Utilities Commission or the Federal Communications Commission in providing those services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev.,

s. 2916; 1907, c. 978; P.L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1975, c. 664, s. 11; 1991 (Reg. Sess., 1992), c. 1013, s. 2; 2006-151, s. 15.)

Editor's Note. —

Session Laws 2006-151, s. 20, is a severability clause.

Effect of Amendments. — Session Laws 2006-151, s. 15, effective January 1, 2007, in subsection (a), in the first sentence, substituted "a telephone system and" for "the operation within the city of" and substituted "G.S. 160A-311, except a cable television system" for "G.S. 160A-311 and for the operation of telephone systems" at the end, added the second sentence, and deleted "years and cable television franchises shall not be granted for a period of more than 20" following "period of more than 30" at the end of the third sentence.

§ 160A-324. Contract with private solid waste collection firm(s).

(a) If the area to be annexed described in an act of the General Assembly includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of introduction in the House of Representatives or the Senate of the bill which became the act making the annexation, was providing solid waste collection services in the area to be annexed, (iii) is still providing such services on the date the act becomes law, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have, subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the effective date of the annexation a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) The city shall make a good faith effort to provide at least 30 days before the effective date of the annexation a copy of the act to each private firm providing solid waste collection services in the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

(1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the firms, or by the city as to customers not served by the firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure, substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards existing at the time of notice provided pursuant to subsection (b) of this section, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the firm under this subsection, the matters shall be determined by the Local Government Commission.

(e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which the bill making the annexation is enacted on or after January 1, 2007.

(g) If the city fails to offer a contract to the firm within 30 days following the effective date of the annexation act, the firm may appeal within 60 days following the effective date of the annexation act to the Local Government Commission for an order directing the city to offer a contract. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall order the city to pay to the firm a civil penalty of the amount of payments it finds that the city would have had to make under the contract, during the noncompliance period until the contract offer is made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than 30 days following a written request of the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. — A sum equal to 15 times the average gross monthly revenue for the three months prior to the introduction of the bill under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenues shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. — A private solid waste collection firm. (1989, c. 598, s. 1; 2006-193, s. 3.)

Effect of Amendments. — Session Laws 2006-193, s. 3, effective August 3, 2006, and applicable to annexations for which the bill making the annexation is enacted on or after January 1, 2007, rewrote subsection (a); added subsections (a1), (a2) and (i); added the last sentence in subsection (b); deleted "private" preceding "firm" and "firms" throughout subsections (c), (d) and (g); substituted "in writing, delivered by certified mail to the firm in question with 30 days to cure" for "for" in subdivision (c)(5); inserted "existing at the time of notice provided pursuant to subsection (b) of this section" in subdivision (c)(6); substituted "the" for "such" near the end of subsection (d); deleted subsections (e) and (f); and, in subsection (h), substituted "30 days" for "five days" in the first sentence and added the last sentence.

§ 160A-327. Displacement of private solid waste collection services.

(a) A unit of local government shall not displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, except as provided for in this section.

(b) Before a local government may displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, the unit of local government shall publish notice of the first meeting where the proposed change in solid waste collection service will be discussed. Notice shall be published once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given no less than 30 days but no more than 60 days prior to the displacement issue being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government. The notice shall specify the date and place of the meeting, the geographic location in which solid waste collection services are proposed to be changed, and the types of solid waste collection services that may be affected. In addition, the unit of local government shall send written notice by certified mail, return receipt requested, to all companies that have filed notice with the unit of local government clerk pursuant to the provisions of subsection (f) of this section. The unit of local government shall deposit notice in the U.S. mail at least 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government.

(c) Following the public notice required by subsection (b) of this section, but in no event later than six months after the date of the first meeting pursuant to subsection (b) of this section, the unit of local government may proceed to take formal action to displace a private company. The unit of local government or other public or private entity selected by the unit of local government may not commence the actual provision of these services for a period of 15 months from the date of the first publication of notice, unless the unit of local government provides compensation to the displaced private company as follows:

(1) Subject to subdivision (3) of this subsection, if the private company has provided collection services in the displacement area prior to announcement of the displacement action, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for collection services provided in the displacement area for the six months prior to the first publication of notice required under subsection (b) of this section.

(2) Subject to subdivision (3) of this subsection, if the displaced private company has provided collection services in the displacement area for less than six months prior to the first publication of notice required under subsection (b) of this section, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for the period of time that the private company provided such services in the displacement area.

(3) If the displaced private company purchased an existing operation of another private company providing such services, compensation shall be for six months based on the monthly average total gross revenues for three months the immediate preceding the first publication of notice required under subsection (b) of this section.

(d) If the local government elects to provide compensation pursuant to subsection (c) of this section, the amount due from the unit of local government to the displaced company shall be paid as follows: one-third of the compensation to be paid within 30 days of the displacement and the balance paid in six equal monthly installments during the next succeeding six months.

(e) If the unit of local government fails to change the provision of solid waste services as described in the notices required under subsection (b) of this section within six months of the date of the first meeting pursuant to subsection (b) of this section, the unit of local government shall not take action to displace without complying again with the provisions of subsection (b) of this section.

(f) Notice of the provision of solid waste collection service shall be filed with the unit of local government clerk of all cities and counties located in the private company's collection area or within five miles thereof.

(g) This section shall not apply when a private company is displaced as the result of an annexation under Article 4A of Chapter 160A of the General Statutes or an annexation by an act of the General Assembly. The provisions of G.S. 160A-37.3, 160-49.3, or 160A-324 shall apply.

(h) If a unit of local government intends to provide compensation under subsection (c) of this section to a private company that has given notice under subsection (f) of this section, the private company shall make available to the unit of local government not later than 30 days following a written request of the unit of local government, sent by certified mail, return receipt requested, all information in its possession or control, including operational, financial, and budgetary information necessary for the unit of local government to determine if the private company qualifies for compensation. The private company forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the unit of local government provided that the unit of local government's written request so states by specific reference to this section.

(i) Nothing in this section shall affect the authority of a city or county to establish recycling service where recycling service is not currently being offered.

(j) As used in this section, the following terms mean:

(1) Collection. — The gathering of municipal solid waste, recovered materials, or recyclables from residential, commercial, industrial, governmental, or institutional customers and transporting it to a sanitary landfill or other disposal facility. Collection does not include transport from a transfer station or processing point to a disposal facility.

(2) Displacement. — Any formal action by a unit of local government that prohibits a private company from providing all or a portion of the collection services for municipal solid waste, recovered materials, or recyclables that the company is providing in the affected area at least 90 days prior to the date of the first publication of notice required by subsection (b) of this section. Displacement also means an action by a unit of local government to use an availability fee, nonoptional fee, or taxes to fund competing collection services for municipal solid waste, recovered materials, or recyclables that the private company is providing in the affected areas at least 90 days prior to the date of the first publication of notice required under subsection (b) of this section is given. Displacement does not include any of the following actions:

a. Failure to renew a franchise agreement or contract with a private company.

b. Taking action that results in a change in solid waste collection services because the private company's operations present an imminent and substantial threat to human health or safety or are causing a substantial public nuisance.

c. Taking action that results in a change in solid waste collection services because the private company has materially breached its franchise agreement or the terms of a contract with the local government, or the company has notified the local government that it no longer intends to honor the terms of the franchise agreement or contract. Notice of breach must be delivered in writing, delivered by certified mail to the firm in question with 30 days to cure the violation of the contract.

d. Terminating an existing contract or franchise in accordance with the provisions of the contract or franchise agreement.

e. Providing temporary collection services under a declared state of emergency.

f. Taking action that results in a change in solid waste collection services due to the existing providers' felony conviction of a violation in the State of federal or State law governing the solid waste collection or disposal.

g. Contracting with a private company to continue its existing services or provide a different level of service at a negotiated price on terms agreeable to the parties.

(3) Municipal solid waste. — As defined in G.S. 130A-290(18a).

(4) Unit of local government. — A county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both. (2006-193, s. 4.)

Editor's Note. — Session Laws 2006-193, s. 5, made this section effective August 3, 2006, and applicable to actions taken on or after January 1, 2007.

ARTICLE 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

Local Modification. — (As to Article 19) Cabarrus and municipalities therein: 1987, c. 233, s. 1; 1991, c. 685, ss. 7, 9; 2004-39, s. 5; (As to this section) Davie: 1989 (Reg. Sess., 1990), c. 853; Durham: 1989 (Reg. Sess., 1990), c. 841, s. 3; Johnston: 1985: (Reg. Sess., 1986), c. 804; Mecklenburg: 1971, c. 860; 1991, (Reg. Sess., 1992), c. 884; (As to Article 19) Orange and municipalities therein: 1987, c. 233, s. 1; 1991, c. 685, ss. 7, 9; Pamlico (except for town of Minnesott Beach): 1977, c. 478, s.3; 2001-134; (As to Article 19) Pitt: 2002-19, s. 1; (As to Article 19) Wake: 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; (As to Article 19) city of Archdale: 2005-115, s. 1; city of Belmont: 1991, c. 596, s. 3; (As to Article 19) city of Charlotte: 1987, c. 123; 1991, c. 161; 2001-228; city of Mount Holly: 1991, c. 289, s. 3; (As to Article 19) city of Raleigh: 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; city of Whiteville: 2000-78, s. 1; town of Aberdeen: 1985, c. 308; town of Apex: 1993, c. 312, ss. 1, 2; (As to Article 19) 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; (As to Article 19) town of Bethel: 2002-19, s. 1; town of Carthage: 1999-239, s. 1; (As to Article 19) town of Cary: 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; (As to subsection (a) of this section) town of Chadbourn: 2004-4, s. 1; (As to Article 19) town of Chocowinity: 2006-51, s. 1; (As to Article 19) town of Cornelius: 1991 (Reg. Sess., 1992), c. 884, s. 1; 1997-106; town of Davidson: 1991 (Reg. Sess., 1992), c. 884, s. 1; 1997-106; town of Faison: 1993 (Reg. Sess., 1994), c. 769, s. 28.16; town of Farmville: 1999-43, s. 1; (As to Article 19) town of Garner: 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; (As to Article 19) town of Grifton: 1993, c. 53, s. 1; town of Huntersville: 1983: (Reg. Sess., 1984), c. 966; 1995, c. 362, s. 3.1; 1997-106; town of Kings Mountain: 1999-259, s. 1; town of Knightdale: 1985, c. 564; town of Marshville: 2006-171, s. 8(a); (As to Article 19) town of Matthews: 1991, c. 161; 1999-69, s. 1; (As to Article 19) town of Mint Hill: 1991, c. 161; 1993 (Reg. Sess., 1994), c. 590; s. 1; town of Mooresville: 1991, c. 289, s. 2; town of Nashville: 1985, c. 217; town of Navassa: 1987, c. 10; town of Pinebluff: 1999-35, ss. 1, 2; (As to Article 19) town of Pineville: 1991, c. 161; town of Pittsboro: 1987, c. 460, s. 30; town of River Bend: 1987, c. 26; 1997-363, s. 1; (As to Article 19) town of St. James, 1999-241; 2005-305, s. 2; town of St. Pauls: 1987, c. 200; town of Sandyfield: 1993 (Reg. Sess., 1994), c. 729, s. 1; town of Southern Pines: 1985, c. 308; town of Stanley: 1991, c. 289, s. 3; town of Tabor City: 1997-281, s. 2; town of Taylortown: 1987, c. 601, s. 2; town of Unionville: 1999-90, s. 2; town of Wake Forest: 1985, c. 196; town of Warsaw: 1985, c. 5; town of Williamston: 1997-281, s. 1; town of Wingate: 2006-171, s. 8(a); village of Pinehurst: 1985, c. 379, s. 4; c. 308; 1991 (Reg. Sess., 1992), c. 808, s. 2; village of Sugar Mountain: 1985, c. 395; village of Woodlake: 1991 (Reg. Sess., 1992), c. 859, s. 1 (contingent on referendum).

Part 3. Zoning.

§ 160A-381. Grant of power.

CASE NOTES

V. Conditional or Special Use Permits.

V. CONDITIONAL OR SPECIAL USE PERMITS.

Special Use Permit Not Required Where No Power to Zone Exists. — Rocky Mount Board of Adjustment had no authority to require a special use permit on the part of the Nash-Rocky Mount Board of Education with regard to its erection of a parking lot, because a parking lot was not a building or the use of a building as that term was provided for in the 2003 version of G.S. 160A-392 applicable to the matter; therefore, the Board of Adjustment had no zoning power and no special use permit was needed. Nash-Rocky Mount Bd. of Educ. v.

Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

§ 160A-382. Districts.

CASE NOTES

No Zoning Power Over School's Parking Lot. — Rocky Mount Board of Adjustment had no authority to require a special use permit on the part of the Nash-Rocky Mount Board of Education with regard to its erection of a parking lot, because a parking lot was not a building or the use of a building as that term was provided for in the 2003 version of G.S. 160A-392 applicable to the matter; therefore, the Board of Adjustment had no zoning power and no special use permit was needed. Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

§ 160A-383. Purposes in view.

Zoning regulations shall be made in accordance with a comprehensive plan. When adopting or rejecting any zoning amendment, the governing board shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city. (1923, c. 250, s. 3; C.S., s. 2776(t); 1971, c. 698, s. 1; 2005-426, s. 7(a); 2006-259, s. 28.)

Effect of Amendments. —
Session Laws 2006-259, s. 28, effective August 23, 2006, in the second sentence of the first paragraph, substituted "When" for "Prior to" at the beginning, substituted "also approve" for "adopt" near the middle, and substituted "and any other officially adopted plan that is applicable, and briefly" for "and" near the end.

§ 160A-385. Changes.

CASE NOTES

II. Protests.

II. PROTESTS.

Town Lacked the Authority to Consider Untimely Protest Petitions. — In a request for rezoning and a special use permit, a town lacked the authority to consider protest petitions that were untimely under G.S. 160A-386; where the town was unable to determine which petitions were timely filed, a super-majority vote was not required, and since a simple majority of the town board voted for a rezoning, the property was rezoned. Coleman v. Town of Hillsborough, 173 N.C. App. 560, 619 S.E.2d 555, 2005 N.C. App. LEXIS 2117 (2005).

§ 160A-386. Protest petition; form; requirements; time for filing.

CASE NOTES

Unable to Determine Timeliness of Petitions. — In a request for rezoning and a special use permit, a town lacked the authority to consider protest petitions that were untimely under G.S. 160A-386; where the town was unable to determine which petitions were timely filed, a super-majority vote was not required, and since a simple majority of the town board voted for a rezoning, the property was rezoned. Coleman v. Town of Hillsborough, 173 N.C. App. 560, 619 S.E.2d 555, 2005 N.C. App. LEXIS 2117 (2005).

§ 160A-387. Planning board; zoning plan; certification to city council.

CASE NOTES

Applied in Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

§ 160A-388. Board of adjustment.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in MMR Holdings, LLC v. City of Charlotte, — N.C. App. —, 621 S.E.2d 210, 2005 N.C. App. LEXIS 2471 (2005).

§ 160A-389. Remedies.

CASE NOTES

No Zoning Power Over School's Parking Lot. — Rocky Mount Board of Adjustment had no authority to require a special use permit on the part of the Nash-Rocky Mount Board of Education with regard to its erection of a parking lot, because a parking lot was not a building or the use of a building as that term was provided for in the 2003 version of G.S. 160A-392 applicable to the matter and, therefore, the Board of Adjustment had no zoning power and no special use permit was needed. Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

§ 160A-392. Part applicable to buildings constructed by State and its subdivisions; exception.

CASE NOTES

"Building." — Plain meaning of the word "building" in G.S. 160A-392 does not encompass a parking lot. Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

No Zoning Power Over School's Parking Lot. — Rocky Mount Board of Adjustment had no authority to require a special use permit on the part of the Nash-Rocky Mount Board of Education with regard to its erection of a parking lot, because a parking lot was not a building or the use of a building as that term was provided for in the 2003 version of G.S. 160A-392 applicable to the matter and, therefore, the Board of Adjustment had no zoning power and no special use permit was needed. Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

Part 5. Building Inspection.

§ 160A-411. Inspection department.

CASE NOTES

Liability of Building Inspector. — Building inspector who was not the chief building inspector was a public official. His position was created by statute, in that position he exercised a portion of the sovereign power delegated to him, through the county, by statute, and work in his official capacity required that he exercise discretion. McCoy v. Coker, 174 N.C. App. 311, 620 S.E.2d 691, 2005 N.C. App. LEXIS 2357 (2005).

§ 160A-425.1. Unsafe buildings condemned in certain localities.

(a) Residential Building and Nonresidential Building or Structure. — Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

(b) Residential Building and Nonresidential Building or Structure. — In addition to the authority granted in subsection (a) of this section, an inspector may declare a residential building or nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

(1) It appears to the inspector to be vacant or abandoned.

(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.

(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens.

(d) This Section applies to the Cities of Clinton, Durham, Fayetteville, Goldsboro, High Point, Lumberton, and Whiteville, and the Towns of Garner, Franklin, Hope Mills and Spring Lake only. (1905, c. 506, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C.S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 1; 2001-386, s. 1; 2002-118, s. 1; 2003-23, s. 1; 2003-42, s. 1; 2004-6, s. 1; 2006-116, s. 3; 2006-252, s. 2.18.)

Effect of Amendments. — Session Laws 2006-116, s. 3, effective July 13, 2006, substituted "Lumberton, and Whiteville" for "and Lumberton" in subsection (d).

Session Laws 2006-252, s. 2.18, effective January 1, 2007, substituted "an urban progress zone under G.S. 143B-437.09" for "a development zone under G.S. 105-129.3A" in the second sentence of subsection (c).

§ 160A-426. Unsafe buildings condemned in other localities.

(a) Residential Building and Nonresidential Building or Structure. — Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

(b) Nonresidential Building or Structure. — In addition to the authority granted in subsection (a) of this section, an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

(1) It appears to the inspector to be vacant or abandoned.

(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.

(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens. (1905, c. 50-6, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C.S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 1; 2001-386, s. 1; 2006-252, s. 2.19.)

Effect of Amendments. — Session Laws 2006-252, s. 2.19, effective January 1, 2007, substituted "an urban progress zone under G.S. 143B-437.09" for "a development zone under G.S. 105-129.3A" in the second sentence of subsection (c).

Part 6. Minimum Housing Standards.

§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.

CASE NOTES

Summary Judgment Improper. — Hertford, N.C., Ordinance § 17 is not inconsistent with the provisions of G.S. 160A-443(6)(c); however, a town was required to comply with G.S. 160A-443(6)(c) to salvage personal property or appurtenances on real estate and apply the proceeds to the cost of removal or demolition, and where owners claimed that mobile homes and contents removed from their property had value, but the town claimed they did not, summary judgment was improper. Town of Hertford v. Harris, 169 N.C. App. 838, 839, 611 S.E.2d 194, 196, 2004 N.C. App. LEXIS 2469 (2005).

Part 8. Miscellaneous Powers.

§ 160A-456. Community development programs and activities.

(a) Any city is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a city may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any city council may exercise directly those powers granted by law to municipal redevelopment commissions and those powers granted by law to municipal housing authorities, and may do so whether or not a redevelopment commission or housing authority is in existence in such city. Any city council desiring to do so may delegate to any redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any city council and any board of county commissioners may by agreement undertake or carry out for each other any specified community development activities. Any city council may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any city council any specified community development activities.

(c) Any city council undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any city council proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such city.

(d1) Any city may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any city that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. A city may implement the receipt, dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a portion of those funds to a third party in accordance with applicable laws governing the CDBG program.

Any city that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes.

(e) Repealed by Session Laws 1985, c. 665, s. 5.

(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in "economically distressed counties", as defined in G.S. 143B-437.01, for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration. (1975, c. 435, s. 1; c. 689, s. 1; c. 879, s. 46; 1983, c. 908, s. 4; 1985, c. 665, s. 5; 1987, c. 464, s. 10; 1987 (Reg. Sess., 1988), c. 992, s. 2; 1995, c. 310, s. 3; 1995 (Reg. Sess., 1996), c. 13, s. 3.9; c. 575, s. 3; 2006-259, s. 27(b).)

Effect of Amendments. — Session Laws 2006-259, s. 27.(b), effective August 23, 2006, substituted "G.S. 143B-437.01" for "G.S. 143B-437A" in the first and last sentence of subsection (e1).

§ 160A-459. Stormwater control.

(a) A city may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A city may adopt a stormwater management ordinance pursuant to this Chapter, its charter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a city stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A city may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the city. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a city may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A city may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A city that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, to establish the stormwater control program necessary for the city to comply with the permit. A city may adopt an ordinance that bans illicit discharges within its corporate limits and its planning jurisdiction. A city may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project.

(e) Unless the city requests the permit condition in its permit application, the Environmental Management Commission may not require as a condition of a National Pollutant Discharge Elimination System (NPDES) stormwater permit issued pursuant to G.S. 143-214.7 that a city implement the measure required by 40 Code of Federal Regulations § 122.34(b)(3)(1 July 2003 Edition) in its extraterritorial jurisdiction. (2006-246, s. 17(b).)

Cross References. — As to stormwater runoff rules and programs, see G.S. 143-214.7.

Editor's Note. — Session Laws 2006-246, s. 20, made this section effective retroactively to July 1, 2006.

ARTICLE 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-461. Interlocal cooperation authorized.

CASE NOTES

Agreements Not Prohibited. — Nothing in Chapter 162A indicates it was designed to restrict the broad grant of authority to local governmental units for interlocal cooperation; therefore, an agreement to construct a water distribution facility was not prohibited because units of local government were permitted to enter into contracts under G.S. 160A-461. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

Part 2. Regional Councils of Governments.

§ 160A-475. Specific powers of council.

The charter may confer on the regional council any of the following powers:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the council), and any private or civic agency.
(2) To employ personnel.
(3) To contract with consultants.
(4) To contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for services.
(5) To study regional governmental problems, including matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning, and regional development.
(6) To promote cooperative arrangements and coordinated action among its member governments.
(7) To make recommendations for review and action to its member governments and other public agencies which perform functions within the region in which its member governments are located.
(7a) For the purpose of meeting the regional council's office space and program needs, to acquire real property by purchase, gift, or otherwise, and to improve that property. The regional council may pledge real property as security for indebtedness used to finance acquisition of that property or for improvements to that real property, subject to approval by the Local Government Commission as required under G.S. 159-153. A regional council may not exercise the power of eminent domain.
(8) Any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern to the extent such powers are specifically delegated to it from time to time by resolution of the governing board of each of its member governments which are affected thereby, provided, that no regional council of governments shall have the authority to construct or purchase buildings, or acquire title to real property, except for the purposes permitted under subdivision (7a) of this section or in order to exercise the authority granted by Chapter 260 of the Session Laws of 1979. (1971, c. 698, s. 1; 1975, c. 517, ss. 1, 2; 1979, c. 902; 2005-290, s. 1; 2006-211, s. 1.)

Effect of Amendments. — Session Laws 2006-211, s. 1, effective August 8, 2006, added the second sentence in subdivision (7a).

Article 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

CASE NOTES

Settlement of Claims Does Not Cause Waiver. — Trial court decision denying JNOV to a city, one of its police officers, and its police department was reversed on appeal, because the plaintiff, an arrestee injured in a squad car, failed to prove gross negligence and only showed simple negligence by evidence that the police officer drove 30 to 35 miles above the legal speed limit although he knew that plaintiff was not wearing a seat belt and had to brake suddenly to avoid a collision causing plaintiff to propel into the metal screen in the squad car. City also did not waive governmental immunity by its voluntary settlement with plaintiff since the city had a liability policy and none of the conditions of waiver, as provided by G.S. 160A-485(a), were met. Clayton v. Branson, 170 N.C. App. 438, 613 S.E.2d 259, 2005 N.C. App. LEXIS 1070 (2005).

Cited in Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

Article 22.

Urban Redevelopment Law.

§ 160A-503. Definitions.

The following terms where used in this Article, shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Area of operation" — The area within the territorial boundaries of the city or county for which a particular commission is created.

(2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area within the meaning of this Article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, it may only be exercised to take a blighted parcel as defined in subdivision (2a) of this section, and the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(2a) "Blighted parcel" shall mean a parcel on which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no parcel shall be considered a blighted parcel nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that the parcel is blighted.

(3) "Bonds" — Any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to this Article.

(4) "City" — Any city or town. "The city" shall mean the particular city for which a particular commission is created.

(5) "Commission" or "redevelopment commission" — A public body and a body corporate and politic created and organized in accordance with the provisions of this Article.

(6) "Field of operation" — The area within the territorial boundaries of the city for which a particular commission is created.

(7) "Governing body" — In the case of a city or town, the city council or other legislative body. The board of county commissioners.

(8) "Government" — Includes the State and federal governments or any subdivision, agency or instrumentality corporate or otherwise of either of them.

(9) "Municipality" — Any incorporated city or town, or any county.

(10) "Nonresidential redevelopment area" shall mean an area in which there is a predominance of buildings or improvements, whose use is predominantly nonresidential, and which, by reason of:

a. Dilapidation, deterioration, age or obsolescence of buildings and other structures,

b. Inadequate provisions for ventilation, light, air, sanitation or open spaces,

c. Defective or inadequate street layout,

d. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness,

e. Tax or special assessment delinquency exceeding the fair value of the property,

f. Unsanitary or unsafe conditions,

g. The existence of conditions which endanger life or property by fire and other causes, or

h. Any combination of such factors

1. Substantially impairs the sound growth of the community,

2. Has seriously adverse effects on surrounding development, and

3. Is detrimental to the public health, safety, morals or welfare; provided, no such area shall be considered a nonresidential redevelopment area nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that at least one half of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a nonresidential redevelopment area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(11) "Obligee of the commission" or "obligee" — Any bondholder, trustee or trustees for any bondholders, any lessor demising property to a commission used in connection with a redevelopment project, or any assignees of such lessor's interest, or any part thereof, and the federal government, when it is a party to any contract with a commission.

(12) "Planning commission" — Any planning commission established by ordinance for a municipality of this State. "The planning commission" shall mean the particular planning commission of the city or town in which a particular commission operates.

(13) "Real property" — Lands, lands under water, structures and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(14) "Redeveloper" — Any individual, partnership or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of an area under the provisions of this Article.

(15) "Redevelopment" — The acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this Article with respect to the area for which such program is undertaken.

(16) "Redevelopment area" — Any area which a planning commission may find to be
- a. A blighted area because of the conditions enumerated in subdivision (2) of this section;
- b. A nonresidential redevelopment area because of conditions enumerated in subdivision (10) of this section;
- c. A rehabilitation, conservation, and reconditioning area within the meaning of subdivision (21) of this section;
- d. Any combination thereof, so as to require redevelopment under the provisions of this Article.

(17) "Redevelopment contract" — A contract between a commission and a redeveloper for the redevelopment of an area under the provisions of this Article.

(18) "Redevelopment plan" — A plan for the redevelopment of a redevelopment area made by a "commission" in accordance with the provisions of this Article.

(19) "Redevelopment project" shall mean any work or undertaking:
- a. To acquire blighted or nonresidential redevelopment areas or portions thereof, or individual tracts in rehabilitation, conservation, and reconditioning areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;
- b. To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;
- c. To sell land in such areas for residential, recreational, commercial, industrial or other use or for the public use to the highest bidder as herein set out or to retain such land for public use, in accordance with the redevelopment plan;
- d. To carry out plans for a program of voluntary or compulsory repair, rehabilitation, or reconditioning of buildings or other improvements in such areas; including the making of loans therefor; and
- e. To engage in programs of assistance and financing, including the making of loans, for rehabilitation, repair, construction, acquisition, or reconditioning of residential units and commercial and industrial facilities in a redevelopment area.

The term "redevelopment project" may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project.

(20) "Redevelopment proposal" — A proposal, including supporting data and the form of a redevelopment contract for the redevelopment of all or any part of a redevelopment area.

(21) "Rehabilitation, conservation, and reconditioning area" shall mean any area which the planning commission shall find, by reason of factors listed in subdivision (2) or subdivision (10), to be subject to a clear and present danger that, in the absence of municipal action to rehabilitate, conserve, and recondition the area, it will become in the reasonably foreseeable future a blighted area or a nonresidential redevelopment area as defined herein. In such an area, no individual tract, building, or improvement shall be subject to the power of eminent domain, within the meaning of this Article, unless it is of the character described in subdivision (2) or subdivision (10) and substantially contributes to the conditions endangering the area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as part of the costs and paid by the petitioners. (1951, c. 1095, s. 3; 1957, c. 502, ss. 1-3; 1961, c. 837, ss. 2, 3, 4, 6; 1967, c. 1249; 1969, c. 1208, s. 1; 1973, c. 426, s. 75; 1981, c. 907, ss. 1, 2; 1985, c. 665, s. 6; 2006-224, ss. 2.1, 2.2; 2006-259, s. 47.)

Editor's Note. — Session Laws 2006-259, s. 47, provides: "If House Bill 1965, 2005 Regular Session (Session Laws 2006-224), becomes law, every reference in that act to July 1, 2006, is changed to August 15, 2006."

Effect of Amendments. — Session Laws 2006-224, ss. 2.1, 2.2, as amended by Session Laws 2006-259, s. 47, effective August 15, 2006, in subdivision (2), deleted "nor subject to the power of eminent domain," preceding "within the meaning of this Article", and inserted "it may only be exercised to take a blighted parcel as defined in subdivision (2a) of this section, and"; and added subdivision (2a).

§ 160A-512. Powers of commission.

A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to those herein otherwise granted:

(1) To procure from the planning commission the designation of areas in need of redevelopment and its recommendation for such redevelopment;

(2) To cooperate with any government or municipality as herein defined;

(3) To act as agent of the State or federal government or any of its instrumentalities or agencies for the public purposes set out in this Article;

(4) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the municipality and to undertake and carry out "redevelopment projects" within its area of operation;

(5) Subject to the provisions of G.S. 160A-514(b) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project; and (notwithstanding anything to the contrary contained in this Article or any other provision of law), to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor stan-

dards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(6) Within its area of operation, to purchase, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project, except that eminent domain may only be used to take a blighted parcel; to hold, improve, clear or prepare for redevelopment any such property, and subject to the provisions of G.S. 160A-514, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the Commission (although disposition of the property is still subject to G.S. 160A-514), with "redevelopers" of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this Article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this Article;

(7) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursements, in such investments as may be lawful for guardians, executors, administrators or other fiduciaries under the laws of this State; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be cancelled;

(8) To borrow money and to apply for and accept advances, loans evidenced by bonds, grants, contributions and any other form of financial assistance from the federal government, the State, county, municipality or other public body or from any sources, public or private for the purposes of this Article, to give such security as may be required and to enter into and carry out contracts in connection therewith; and, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the commission may deem reasonable and appropriate and which are not inconsistent with the purposes of this Article;

(9) Acting through one or more commissioners or other persons designated by the commission, to conduct examinations and investigations

and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers;

(10) Within its area of operation, to make or have made all surveys studies and plans (but not including the preparation of a general plan for the community) necessary to the carrying out of the purposes of this Article and in connection therewith to enter into or upon any land, building, or improvement thereon for such purposes and to make soundings, test borings, surveys, appraisals and other preliminary studies and investigations necessary to carry out its powers but such entry shall constitute no cause of action for trespass in favor of the owner of such land, building, or improvement except for injuries resulting from negligence, wantonness or malice; and to contract or cooperate with any and all persons or agencies public or private, in the making and carrying out of such surveys, appraisals, studies and plans.

A redevelopment commission is hereby specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements and (ii) plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements. The redevelopment commission is further authorized to develop, test and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and urban blight.

(11) To make such expenditures as may be necessary to carry out the purposes of this Article; and to make expenditures from funds obtained from the federal government;

(12) To sue and be sued;

(13) To adopt a seal;

(14) To have perpetual succession;

(15) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary, or, treasurer or assistant treasurer of the commission shall be held to have been properly executed for and on its behalf;

(16) To make and from time to time amend and repeal bylaws, rules, regulations and resolutions;

(17) To make available to the government or municipality or any appropriate agency, board or commission, the recommendations of the commission affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety or welfare;

(18) To perform redevelopment project undertakings and activities in one or more contiguous or noncontiguous redevelopment areas which are planned and carried out on the basis of annual increments. (1951, c. 1095, s. 9; 1961, c. 837, ss. 5, 7; 1969, c. 254, s. 1; 1973, c. 426, s. 75 1981 (Reg. Sess., 1982), c. 1276, s. 14; 2003-403, s. 17; 2006-224, s. 2.3; 2006-259, s. 47.)

Editor's Note. —

Session Laws 2006-259, s. 47, provides: "IfHouse Bill 1965, 2005 Regular Session (Session Laws 2006-224), becomes law, every reference in that act to July 1, 2006, is changed to August 15, 2006."

Effect of Amendments. — Session Laws 2006-224, s. 2.3, as amended by Session Laws 2006-259, s. 47, effective August 15, 2006, inserted "except that eminent domain may only be used to take a blighted parcel" near the beginning of subdivision (6).

§ 160A-515. Eminent domain.

The commission may exercise the right of eminent domain in accordance with the provisions of Chapter 40A, but only where the property to be taken is a blighted parcel. (1951, c. 1095, s. 12; 1965, c. 679, s. 3; c. 1132; 1967, c. 932, ss. 2, 3; 1973, c. 426, s. 75; 1981, c. 919, s. 30; 2006-224, s. 2.4; 2006-259, s. 47.)

Editor's Note. — Session Laws 2006-259, s. 47, provides: "If House Bill 1965, 2005 Regular Session (Session Laws 2006-224), becomes law, every reference in that act to July 1, 2006, is changed to August 15, 2006."

Effect of Amendments. — Session Laws 2006-224, s. 2.4, as amended by Session Laws 2006-259, s. 47, effective August 15, 2006, added "but only where the property to be taken is a blighted parcel" at the end.

§ 160A-515.1. Project development financing.

(a) Authorization. — A city may finance a redevelopment project and any related public improvements with the proceeds of project development financing debt instruments, issued pursuant to Article 6 of Chapter 159 of the General Statutes, together with any other revenues that are available to the city. Before it receives the approval of the Local Government Commission for issuance of project development financing debt instruments, the city's governing body must define a development financing district and adopt a development financing plan for the district. The city may act jointly with a county to finance a project, define a development financing district, and adopt a development financing plan for the district.

(b) Development Financing District. — A development financing district shall comprise all or portions of one or more redevelopment areas defined pursuant to this Article. The total land area within development financing districts in a city, including development financing districts created pursuant to G.S. 158-7.3, may not exceed five percent (5%) of the total land area of the city. For purposes of this section, land in a district created by a county that subsequently becomes part of a city does not count against the city's five-percent (5%) limit unless the city and the county have entered into an agreement pursuant to G.S. 159-107(e).

(c) Development Financing Plan. — The development financing plan must be compatible with the redevelopment plan or plans for the redevelopment area or areas included within the district. The development financing plan must include all of the following:

(1) A description of the boundaries of the development financing district.
(2) A description of the proposed development of the district, both public and private.
(3) The costs of the proposed public activities.
(4) The sources and amounts of funds to pay for the proposed public activities.
(5) The base valuation of the development financing district.
(6) The projected incremental valuation of the development financing district.
(7) The estimated duration of the development financing district.
(8) A description of how the proposed development of the district, both public and private, will benefit the residents and business owners of the district in terms of jobs, affordable housing, or services.
(9) A description of the appropriate ameliorative activities which will be undertaken if the proposed projects have a negative impact on

residents or business owners of the district in terms of jobs, affordable housing, services, or displacement.

(10) A requirement that the initial users of any new manufacturing facilities that will be located in the district and that are included in the plan will comply with the wage requirements in subsection (d) of this section.

(d) Wage Requirements. — A development financing plan shall include a requirement that the initial users of a new manufacturing facility to be located in the district and included in the plan must pay its employees an average weekly manufacturing wage that is either above the average manufacturing wage paid in the county in which the district will be located or not less than ten percent (10%) above the average weekly manufacturing wage paid in the State. The plan may include information on the wages to be paid by the initial users of a new manufacturing facility to its employees and any provisions necessary to implement the wage requirement. The issuing unit's governing body shall not adopt a plan until the Secretary of Commerce certifies that the Secretary has reviewed the average weekly manufacturing wage required by the plan to be paid to the employees of a new manufacturing facility and has found either (i) that the wages proposed by the initial users of a new manufacturing facility are in compliance with the amount required by this subsection or (ii) that the plan is exempt from the requirement of this subsection. The Secretary of Commerce may exempt a plan from the requirement of this subsection if the Secretary receives a resolution from the issuing unit's governing body requesting an exemption from the wage requirement and a letter from an appropriate State official, selected by the Secretary, finding that unemployment in the county in which the proposed district is to be located is especially severe. Upon the creation of the district, the unit of local government proposing the creation of the district shall take any lawful actions necessary to require compliance with the applicable wage requirement by the initial users of any new manufacturing facility included in the plan; however, failure to take such actions or obtain such compliance shall not affect the validity of any proceedings for the creation of the district, the existence of the district, or the validity of any debt instruments issued under Article 6 of Chapter 159 of the General Statutes. All findings and determinations made by the Secretary of Commerce under this subsection shall be binding and conclusive. For purposes of this section, the term "manufacturing facility" means any facility that is used in the manufacturing or production of tangible personal property, including the processing resulting in a change in the condition of the property.

(e) County Review. — Before adopting a plan for a development financing district, the city council shall send notice of the plan, by first-class mail, to the board of county commissioners of the county or counties in which the development financing district is located. The person mailing the notice shall certify that fact, and the date thereof, to the city council, and the certificate is conclusive in the absence of fraud. Unless the board of county commissioners (or either board, if the district is in two counties) by resolution disapproves the proposed plan within 28 days after the date the notice is mailed, the city council may proceed to adopt the plan.

(f) Environmental Review. — Before adopting a plan for development financing districts, the city council shall submit the plan to the Secretary of Environment and Natural Resources to review to determine if the construction and operation of any new manufacturing facility in the district will have a materially adverse effect on the environment and whether the company that will operate the facility has operated in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. If the Secretary finds that the new manufacturing facility will not have a materially adverse effect on the environment and that the company that will operate the facility has operated other facilities in compliance with environmental requirements, the Secretary shall approve the plan. In making the determination on environmental impact, the Secretary shall use the same criteria that apply to the determination under G.S. 159C-7 of whether an industrial project will have a materially adverse effect on the environment. The findings of the Secretary are conclusive and binding.

(g) Plan Adoption. — Before adopting a plan for a development financing district, the city council shall hold a public hearing on the plan. The council shall, no less than 30 days before the day of hearing, cause notice of the hearing to be mailed by first-class mail to all property owners and mailing addresses within the proposed development financing district. The council shall also, no more than 30 days and no less than 14 days before the day of the hearing, cause notice of the hearing to be published once in a newspaper of general circulation in the city. The notice shall state the time and place of the hearing, shall specify its purpose, and shall state that a copy of the proposed plan is available for public inspection in the office of the city clerk. At the public hearing, the council shall hear anyone who wishes to speak with respect to the proposed district and proposed plan. Unless a board of county commissioners or the Secretary of Environment and Natural Resources has disapproved the plan pursuant to subsection (e) or (f) of this section, the council may adopt the plan, with or without amendment, at any time after the public hearing. However, the plan and the district do not become effective until the city's application to issue project development financing debt instruments has been approved by the Local Government Commission, pursuant to Article 6 of Chapter 159 of the General Statutes.

(h) Plan Modification. — Subject to the limitations of this subsection, a city council may, after the effective date of the district, amend a development financing plan adopted for a development financing district. Before making any amendment, the city council shall follow the procedures and meet the requirements of subsections (d) through (g) of this section. The boundaries of the district may be enlarged only during the first five years after the effective date of the district and only if the area to be added has been or is about to be developed and the development is primarily attributable to development that has occurred within the district, as certified by the Local Government Commission. The boundaries of the district may be reduced at any time, but the city may agree with the holders of any project development financing debt instruments to restrict its power to reduce district boundaries.

(i) Plan Implementation. — In implementing a development financing plan, a city may act directly, through a redevelopment commission, through one or more contracts with private agencies, or by any combination of these. A private agency that enters into a contract with a city for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. (2003-403, s. 18; 2005-238, s. 12; 2006-211, s. 4.)

Effect of Amendments. — Session Laws 2006-211, s. 4, effective August 8, 2006, added the last sentence in subsection (i).

Article 23.

Municipal Service Districts.

§ 160A-537. Definition of service districts.

(a) Standards. — The city council of any city may by resolution define a service district upon finding that a proposed district is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city.

(b) Report. — Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;
(2) A statement showing that the proposed district meets the standards set out in subsection (a); and
(3) A plan for providing in the district one or more of the services listed in G.S. 160A-536.

The report shall be available for public inspection in the office of the city clerk for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The city council shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(d) Effective Date. — The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city council, except that if the governing body in the resolution states that general obligation bonds are anticipated to be authorized for the project, it may make the resolution effective immediately upon its adoption, but no ad valorem tax may be levied for a partial fiscal year.

(e) In the case of a resolution defining a service district, which is adopted during the period beginning July 1, 1981, and ending July 31, 1981, and which district is for any purpose defined in G.S. 160A-536(1), the city council may make the resolution effective for the fiscal year beginning July 1, 1981. In any such case, the report under subsection (b) of this section need only have been available for public inspection for at least two weeks before the date of the public hearing, and the notice required by subsection (c) of this section need only have been mailed at least two weeks before the date of the hearing. (1973, c. 655, s. 1; 1981, c. 53, s. 1; c. 733, s. 1; 2006-162, s. 25.)

Effect of Amendments. — Session Laws 2006-162, s. 25, effective July 24, 2006, added the exception at the the end of subsection (d).

Chapter 161.

Register of Deeds.

Article 2.

The Duties.

Sec.
161-31. Tax certification.

Article 1.

The Office.

§ 161-10. Uniform fees of registers of deeds.

Editor's Note. —
Session Laws 2005-123, s. 9.1, as added by Session Laws 2006-226, s. 28, provides: "The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

CASE NOTES

Applied in Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

Article 2.

The Duties.

§ 161-14.1. Recording subsequent entries as separate instruments.

Editor's Note. — Session Laws 2005-123, s. 9.1, as added by Session Laws 2006-226, s. 28, provides: "The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

§ 161-22. Index of registered instruments.

Editor's Note. —
Session Laws 2005-123, s. 9.1, as added by Session Laws 2006-226, s. 28, provides: "The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

§ 161-31. Tax certification.

(a) Tax Certification. — The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. — If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: ____________________, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

(b) Applicability. — This section applies only to Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wilson, and Yadkin Counties. (2001-464, s. 1; 2001-513, s. 14; 2002-51, s. 1; 2003-72, s. 1; 2003-189, s. 6; 2003-354, s. 3; 2004-65, s. 1; 2005-109, s. 1; 2005-433, s. 2(a); 2006-16, s. 1; 2006-150, s. 1.)

Effect of Amendments. —

Session Laws 2006-16, s. 1, effective July 1, 2006, inserted "Tyrrell" in subsection (b).

Session Laws 2006-150, s. 1, effective July 20, 2006, inserted "Davie" and "Lincoln" in subsection (b).

Chapter 162.

Sheriff.

ARTICLE 2.

Sheriff's Bond.

§ 162-8. Bond required.

CASE NOTES

II. Liability on Bonds.

II. LIABILITY ON BONDS.

Waiver of Immunity. — In an action in which soldiers, who were shot by a sheriff's deputy, sought to hold the sheriff in his official capacity liable on the basis of respondeat superior for the alleged assault and battery committed by the deputy, the sheriff's governmental immunity was waived pursuant to G.S. 58-76-5 by the purchase of a statutorily required bond under G.S. 162-8 because the sheriff's surety was joined as a party. Massasoit v. Carter, 439 F. Supp. 2d 463, 2006 U.S. Dist. LEXIS 48305 (M.D.N.C. 2006).

ARTICLE 3.

Duties of Sheriff.

§ 162-16. Execute summons, order or judgment.

CASE NOTES

Service By Deputy Sheriffs in an Action Against Deputy. —

Residents failed to comply with G.S. 162-16, and therefore a sheriff and deputy were never properly served with summons, where another deputy served both the sheriff and the deputy; such service was improper since the clerk of court never designated that deputy as her agent to serve the sheriff and the deputy. Mabee v. Onslow County Sheriff's Dep't, 174 N.C. App. 210, 620 S.E.2d 307, 2005 N.C. App. LEXIS 2296 (2005).

Chapter 162A.

Water and Sewer Systems.

Article 1.

Water and Sewer Authorities.

Sec.
162A-5. Members of authority; organization; quorum.

Article 6.

County Water and Sewer Districts.

Sec.
162A-87.1B. Transfer of State-owned property from one district to another.

Article 1.

Water and Sewer Authorities.

§ 162A-1. Title.

CASE NOTES

Agreements Not Prohibited. — Nothing in Chapter 162A indicates it was designed to restrict the broad grant of authority to local governmental units for interlocal cooperation; therefore, an agreement to construct a water distribution facility was not prohibited because units of local government were permitted to enter into contracts under G.S. 160A-461. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 162A-3. Procedure for creation; certificate of incorporation; certification of principal office and officers.

CASE NOTES

Cited in Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 162A-4. Withdrawal from authority; joinder of new subdivision.

CASE NOTES

Cited in Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 162A-5. Members of authority; organization; quorum.

(a) Each authority organized under this Article shall consist of the number of members as may be agreed upon by the participating political subdivisions, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring one year, two years and three years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of three years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed; provided, however, that a political subdivision subsequently joining an authority created under G.S. 162A-3.1, or under the provisions of G.S. 162A-3 other than subsection (a1), shall not have the right to appoint any members to such authority. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member. This subsection does not apply in the case of an authority that a city joins under G.S. 162A-5.1.

(b) Each authority organized under this Article that a city has joined under G.S. 162A-5.1 shall consist of the number of members provided by that section, such members to be selected as provided by that section. Two each of the members of the authority first appointed after a city has joined under G.S. 162A-5.1 shall have terms expiring one year and two years respectively from the date on which the certificate of joinder was issued, and three of the members of the authority first appointed after a city has joined under G.S. 162A-5.1 shall have terms expiring three years from the date on which the certificate of joinder was issued. Such designation shall be made by the authority by lot at the meeting where members take their oaths of office. Successor members shall each be appointed for a term of three years to commence on the day that the terms of the prior members' terms expire, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member.

(c) Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority may be paid a per diem compensation set by the authority which per diem may not exceed the total amount of four thousand dollars ($4,000) annually, and shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. (1955, c. 1195, s. 5; 1969, c. 850; 1971, c. 892, s. 1; 1975, c. 224, ss. 3, 4; 1995, c. 207, s. 3; 1999-456, s. 43; 2001-224, s. 2.1; 2005-127, s. 2; 2006-226, s. 29.)

Editor's Note. — Session Laws 2005-127, s. 3, as amended by Session Laws 2006-226, s. 29, provides that for each water and sewer authority organized under Article 1 of Chapter 162A of the General Statutes, G.S. 162A-5(c) applies on the first day of the fiscal year of the authority that begins on or after June 29, 2005.

Effect of Amendments. — Session Laws 2005-127, s. 2, as amended by Session Laws 2006-226, s. 29, effective June 29, 2005, and applicable on the first day of the fiscal year of the authority that begins after that date, substituted "four thousand dollars ($4,000)" for "two thousand dollars ($2,000)" in the last paragraph of subsection (c).

§ 162A-5.1. Political subdivision allowed to join certain authorities.

CASE NOTES

Cited in Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

Article 6.

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If any property owned by the State is located in a county water and sewer district, the board of commissioners of that county by resolution may transfer the property to another county water and sewer district in that county. This section only applies if the State acquired the property from the county. Any such resolution shall become effective on the date specified in the resolution, and a copy of the resolution shall be sent to the Department of Administration. (2005-127, s. 1; 2006-226, s. 29.)

Editor's Note. — Session Laws 2005-127, s. 3, as amended by Session Laws 2006-226, s. 29, made this section effective June 29, 2005. For each water and sewer authority organized under Article 1 of Chapter 162A of the General Statutes, G.S. 162A-5(c) applies on the first day of the fiscal year of the authority that begins on or after June 29, 2005.

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SUBCHAPTER II. ELECTION OFFICERS.

ARTICLE 3.

State Board of Elections.

§ 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.

All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1969, or when their successors in office are appointed and qualified.

The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the Board shall be members of the same political party. The Governor shall appoint the members from a list of nominees submitted to him by the State party chairman of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board of Elections. Each party chairman shall submit a list of five nominees who are affiliated with that political party.

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill the vacancy from a list of three nominees submitted to him by the State party chairman of the political party that nominated the vacating member as provided by the preceding paragraph. The three nominees must be affiliated with that political party.

At the first meeting held after new appointments are made, the members of the State Board of Elections shall take the following oath:

> "I, ________, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me, God."

After taking the prescribed oath, the Board shall organize by electing one of its members chairman and another secretary.

No person shall be eligible to serve as a member of the State Board of Elections who holds any elective or appointive office under the government of the United States, or of the State of North Carolina or any political subdivision thereof. No person who holds any office in a political party, or organization, or who is a candidate for nomination or election to any office, or who is a campaign manager or treasurer of any candidate in a primary or election shall be eligible to serve as a member of the State Board of Elections. (1901, c. 89, ss. 5, 7; Rev., ss. 2760, 4300, 4301; C.S., ss. 5921, 5922; 1933, c. 165, s. 1; 1953, c. 428; 1967, c. 775, s. 1; 1975, c. 286; 1985, c. 62, ss. 1, 1.1; 2005-276, s. 23A.3; 2006-262, s. 4.2.)

Editor's Note. —

Session Laws 2005-276, s. 23A.3, effective July 1, 2005, substituted "may" for "shall" in the fourth sentence of the second paragraph, and in the second sentence of the third paragraph. Session Laws 2006-262, s. 4.2, repealed Session Laws 2005-276, s. 23A.3, effective August 27, 2006. The section, as set out above, appears as it did prior to the 2005 amendments.

Session Laws 2006-262, s. 5, provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER III. QUALIFYING TO VOTE.

ARTICLE 6.

Qualifications of Voters.

§ 163-57. Residence defined for registration and voting.

All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning.

a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.

b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163-86. The presentation of an accurate and current determination of a person's residence and the boundary line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.

c. In the event that a person's residence is not a traditional residence associated with real property, then the location of the usual sleeping area for that person shall be controlling as to the residency of that person. Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.

(2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another state, county, munic-

ipality, precinct, ward, or other election district of this State, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any county, municipality, precinct, ward, or other election district of this State, into which that person comes for temporary purposes only, without the intention of making that county, municipality, precinct, ward, or other election district a permanent place of abode.

(4) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of making that state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the state, county, municipality, precinct, ward, or other election district from which that person has removed.

(5) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that state, county, municipality, precinct, ward, or other election district that person's place of residence, that person shall be considered to have lost that person's place of residence in this State, county, municipality, precinct, ward, or other election district from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.

(6) If a person goes into another state, county, municipality, precinct, ward, or other election district, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to have lost residence in that State, county, municipality, precinct, ward, or other election district from which that person removed.

(7) School teachers who remove to a county, municipality, precinct, ward, or other election district in this State for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live where their parents or other relatives reside in this State and who do not have the intention of becoming residents of the county, municipality, precinct, ward, or other election district to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county, municipality, precinct, ward, or other election district in which their parents or other relatives reside.

(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9) If a person removes to a county, municipality, precinct, ward, or other election district to engage in the service of the State government, that person shall not be considered to have lost residence in the county, municipality, precinct, ward, or other election district from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9a) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.

(10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.

(11) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law. (19th amendt. U.S. Const.; amendt. State Const., 1920; 1901, c. 89, s. 15; Rev., s. 4316; C.S., s. 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1981, c. 184; 1991, c. 727, s. 5.1; 1993 (Reg. Sess., 1994), c. 762, s. 22; 2001-316, s. 1; 2005-428, s. 3(b); 2006-262, s. 2.1.)

Editor's Note. —

Session Laws 2006-262, s. 5, provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-262, s. 2.1, effective August 27, 2006, in subdivision (1), inserted "that person" near the end of the introductory paragraph and added subdivision (1)c.

Article 7A.

Registration of Voters.

§ 163-82.15. Change of address within the county.

(a) Registrant's Duty to Report. — No registered voter shall be required to re-register upon moving from one precinct to another within the same county. Instead, a registrant shall notify the county board of the change of address by the close of registration for an election as set out in G.S. 163-82.6(c). In addition to any other method allowed by G.S. 163-82.6, the form may be submitted by electronic facsimile, under the same deadlines as if it had been submitted in person. The registrant shall make the notification by means of a voter registration form as described in G.S. 163-82.3, or by another written notice, signed by the registrant, that includes the registrant's full name, former residence address, new residence address, and the registrant's attestation that the registrant moved at least 30 days before the next primary or election from the old to the new address.

(b) Verification of New Address by Mail. — When a county board of elections receives a notice that a registrant in that county has changed residence within the same county, the county board shall send a notice, by nonforwardable mail, to the registrant at the new address. The notice shall inform the registrant of any new precinct and voting place that will result from the change of address, and it shall state whether the registrant shall vote at the new voting place during the upcoming election or at a later election. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall either:

(1) Send a second notice by nonforwardable mail to the new address and, if it is returned as undeliverable, send to the registrant's old address a confirmation notice as described in G.S. 163-82.14(d)(2); or

(2) Send to the registrant's old address a confirmation notice as described in G.S. 163-82.14(d)(2) without first sending a second nonforwardable notice to the new address.

In either case, if the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) Board's Duty to Make Change. — If the county board confirms the registrant's new address in accordance with subsection (b) of this section, the county board shall as soon as practical change the record to reflect the new address.

(d) Unreported Move Within the Same Precinct. — A registrant who has moved from one address to another within the same precinct shall, notwithstanding failure to notify the county board of the change of address before an election, be permitted to vote at the voting place of that precinct upon oral or written affirmation by the registrant of the change of address before a precinct official at that voting place.

(e) Unreported Move to Another Precinct Within the County. — If a registrant has moved from an address in one precinct to an address in another precinct within the same county more than 30 days before an election and has failed to notify the county board of the change of address before the close of registration for that election, the county board shall permit that person to vote in that election. The county board shall permit the registrant described in this subsection to vote at the registrant's new precinct, upon the registrant's written affirmation of the new address, or, if the registrant prefers, at a central location in the county to be chosen by the county board. If the registrant appears at the old precinct, the precinct officials there shall send the registrant to the new precinct or, if the registrant prefers, to the central location, according to rules which shall be prescribed by the State Board of Elections. At the new precinct, the registrant shall be processed by a precinct transfer assistant, according to rules which shall be prescribed by the State Board of Elections. Any voter subject to this subsection may instead vote a provisional ballot according to the provisions of G.S. 163-166.11.

(f) When Registrant Disputes Registration Records. — If the registration records indicate that the registrant has moved outside the precinct, but the registrant denies having moved from the address within the precinct previously shown on the records, the registrant shall be permitted to vote at the voting place for the precinct where the registrant claims to reside, if the registrant gives oral or written affirmation before a precinct official at that voting place.

(g) Precinct Transfer Assistants. — The county board of elections shall either designate a board employee or appoint other persons to serve as precinct transfer assistants to receive the election-day transfers of the voters described in subsection (e) of this section. In addition, board members and employees may perform the duties of precinct transfer assistants. The State Board of Elections shall promulgate uniform rules to carry out the provisions of this section, and shall define in those rules the duties of the precinct transfer assistant. (1979, c. 135, s. 2; 1983, c. 392, s. 2; 1984, Ex. Sess., c. 3, ss. 1, 2; 1987, c. 549, s. 1; 1989, c. 427; 1991, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 2; 2001-314, s. 1; 2005-2, s. 3; 2006-262, s. 2.)

Editor's Note. —

Session Laws 2006-262, s. 5, provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-262, s. 2, effective August 27, 2006, substituted "the registrant's attestation that the registrant moved at least 30 days before the next primary or election" for "date of moving" near the end of the last sentence in subsection (a).

§ 163-82.28. The HAVA Election Fund.

There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement HAVA. (2003-12, s. 1; 2005-276, s. 23A.2(a); 2005-323, s. 7; 2006-264, s. 76(d).)

Editor's Note. —

Session Laws 2005-323, s. 7, effective August 26, 2005, added "and for purposes permitted by HAVA to comply with State law" at the end of the last sentence. Session Laws 2006-264, s. 76(d), repealed Session Laws 2005-323, s. 7, effective August 27, 2006.

ARTICLE 8.

Challenges.

§ 163-87. Challenges allowed on day of primary or election.

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163-85(c).
(2) That the person has already voted in that primary or election.
(3) That the person presenting himself to vote is not who he represents himself to be.
(4) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred. (1915, c. 101, s. 11; 1917, c. 218; C.S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; c. 1203, s. 7; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1985, c. 563, ss. 11.4, 14; 1987, c. 408, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 26; 1995 (Reg. Sess., 1996), c. 734, s. 4; 2006-262, s. 3(a).)

Editor's Note. —

Session Laws 2006-262, s. 5, provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-262, s. 3(a), effective August 27, 2006, added subdivision (4); deleted the former third paragraph which read: "On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the chief judge and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163-88; provided that no challenge may be made on the grounds specified in the paragraph against an unaffiliated voter voting in the primary under G.S. 163-74(a1)."; and made minor punctuation changes.

§ 163-90.2. Action when challenge sustained, overruled, or dismissed.

(a) When any challenge is sustained for any cause listed under G.S. 163-85(c), the board shall cancel or correct the voter registration of the voter. The board shall maintain such record for at least six months and during the pendency of any appeal. The challenged ballot shall be counted for any ballot items for which the challenged voter is eligible to vote, as if it were a provisional official ballot under the provisions of G.S. 163-166.11(4).

(b) Repealed by Session Laws 2006-252, s. 3(b), effective August 27, 2006.

(c) When any challenge made under G.S. 163-85 is overruled or dismissed, the board shall erase the word "challenged" which appears on the person's registration records.

(d) A decision by a county board of elections on any challenge made under the provisions of this Article shall be appealable to the Superior Court of the county in which the offices of that board are located within 10 days. Only those persons against whom a challenge is sustained or persons who have made a challenge which is overruled shall have standing to file such appeal. (1979, c. 357, s. 4; 1987 (Reg. Sess., 1988), c. 1028, s. 11; 2006-262, s. 3(b).)

Editor's Note. — Session Laws 2006-262, s. 5, provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-262, s. 3(b), effective August 27, 2006, in subsection (a), inserted "or correct", substituted "voter. The board" for "voter and shall remove his card from the book, but", and added the last sentence; and deleted former subsection (b) which read: "When any challenge heard under G.S. 163-88 or 163-89 is sustained on the ground that the voter is not affiliated with the political party shown on his registration record, the board shall change the voter's party affiliation to 'unaffiliated.'"

SUBCHAPTER IV. POLITICAL PARTIES.

Article 9.

Political Party Definition.

§ 163-96. "Political party" defined; creation of new party.

(a) Definition. — A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. — Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: “THE UNDERSIGNED REGISTERED VOTERS IN ________ COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED ________ AND WHOSE STATE CHAIRMAN IS ____________, RESIDING AT ____________ AND WHO CAN BE REACHED BY TELEPHONE AT ________.”
All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board’s opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman’s duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate
   a. Stating that the signatures on the petition have been checked against the registration records and
   b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented.

(c) Repealed by Session Laws 1983, c. 576, s. 3. (1901, c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218; C.S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1; 1975, c. 179; 1979, c. 411, s. 3; 1981, c. 219, ss. 1-3; 1983, c. 576, ss. 1-3; 1997-456, s. 27; 1999-424, s. 5(a); 2004-127, s. 14; 2006-234, s. 1.)

Effect of Amendments. — Session Laws 2006-234, s. 1, effective January 1, 2007, and applicable to all primaries and elections held on or after January 1, 2007, substituted "two percent (2%)" for "ten percent (10%)" near the end of subdivision (a)(1).

§ 163-97. Termination of status as political party.

When any political party fails to meet the test set forth in G.S. 163-96(a)(1), it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter. (1901, c. 89, s. 85; Rev., s. 4292; C.S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1; 2006-234, s. 2.)

Effect of Amendments. — Session Laws 2006-234, s. 2, effective January 1, 2007, and applicable to all primaries and elections held on or after January 1, 2007, substituted "meet the test set forth in G.S. 163-96(a)(1)" for "poll for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote case in the State for governor or for presidential electors at a general election" near the beginning of the section.

§ 163-98. General election participation by new political party.

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot. (1901, c. 89, s. 85; Rev., s. 4292; C.S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1; 1979, c. 411, s. 4; 2002-159, s. 55(b); 2006-234, s. 3.)

Effect of Amendments. — Session Laws 2006-234, s. 3, effective January 1, 2007, and applicable to all primaries and elections held on or after January 1, 2007, added "upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1" at the end of the first sentence of the first paragraph; and deleted "for State, congressional, and national offices" following "party's candidates" near the end of the first sentence of the second paragraph.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

Primary Elections.

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.

(a) Notice and Pledge. — No one shall be voted for in a primary election without having filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date ____________________

I hereby file notice as a candidate for nomination as ________________________ in the ____________________ party primary election to be held on _______________, ____________ I affiliate with the ____________________ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the ________________________ party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed ______________________________________
(Name of Candidate)

Witness:
____
____
(Title of witness)"

Each candidate shall sign the notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which the candidate files. In the alternative, a candidate may have the candidate's signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail or deliver by commercial courier service the candidate's notice of candidacy to the appropriate board of elections.

In signing the notice of candidacy the candidate shall use only that candidate's legal name and may use any nickname by which he is commonly known. A candidate may also, in lieu of that candidate's legal first name and legal middle initial or middle name (if any) sign a nickname, provided that the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way that candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. — No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. — Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any primary in which there are two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

(e) Withdrawal of Notice of Candidacy. — Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a board of elections under subsection (c) of this section or under G.S. 163-291(2), the board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

(i) Repealed by Session Laws 2001-403, s. 3, effective January 1, 2002. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2.)

Editor's Note. —

Session Laws 2006-155, s. 7, is a severability clause.

Effect of Amendments. —

Session Laws 2006-155, s. 2, effective January 1, 2007, and applicable to actions filed on or after January 1, 2007, in subsection (g), in the first paragraph, deleted "county" preceding "board", substituted "board" for "chairman or director", and substituted "does not meet the constitutional or statutory qualifications for the office, including residency" for "is not eligible under subsection (c) of this section" at the end, in the second paragraph, in the first sentence, added "and to any other candidate filing for the same office" at the end, added the last two sentences, and made a minor stylistic change.

§ 163-107. Filing fees required of candidates in primary; refunds.

CASE NOTES

Applied in Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

§ 163-111. Determination of primary results; second primaries.

(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. — Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:

(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

(b) Right to Demand Second Primary. — If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

(1) If a nominee for a single office is to be selected and no aspirant receives a substantial plurality of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.

(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a substantial plurality of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees

for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

(c) Procedure for Requesting Second Primary. —

(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing with the Executive Director of the State Board of Elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
District Attorneys of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing with the chairman or director of the county board of elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,
Members of the State House of Representatives in single-county representative districts, and
All county officers.

(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary.

(d) Tie Votes; How Determined. —

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of

candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Date of Second Primary; Procedures. — If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held seven weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely written affirmation of change of address within the county under the provisions of G.S. 163-82.15, in the first primary may vote in the second primary without having to refile that written affirmation if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.

(f) No Third Primary Permitted. — In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of G.S. 163-114. (1915, c. 101, s. 24; 1917, c. 179, s. 2; c. 218; C.S., s. 6045; 1927, c. 260,

s. 23; 1931, c. 254, s. 17; 1959, c. 1055; 1961, c. 383; 1966, Ex. Sess., c. 5, s. 13; 1967, c. 775, s. 1; 1969, c. 44, s. 85; 1973, c. 47, s. 2; c. 793, ss. 43, 44; 1975, c. 844, s. 3; 1977, c. 265, s. 9; 1981, c. 645, ss. 1, 2; 1989, c. 549; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 10; 1999-424, s. 7(e); 2001-319, s. 11; 2001-403, s. 5; 2002-158, s. 12; 2003-278, s. 10(d); 2006-192, s. 2.)

Effect of Amendments. —

Session Laws 2006-192, s. 2, effective January 1, 2007, and applicable to all primaries and elections conducted on or after January 1, 2007, in subsection (e), substituted "seven" for "four" in the first paragraph, and, in the second paragraph, substituted "written affirmation" for "affidavit", substituted "change of address within the county" for "transfer of precinct,", substituted "in" for "before", and substituted "that written affirmation" for "the affidavit of transfer".

§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator

single-county representative district	or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Any elective county office	

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1973, c. 793, s. 45; 1981 (Reg. Sess., 1982), c. 1265, ss. 4, 5; 1987, c. 509, s. 10; c. 526; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1037, s. 126.1; 1991, c. 727, s. 8; 1996, 2nd Ex. Sess., c. 9, s. 13; 2001-353, s. 1; 2001-403, s. 8; 2001-460, s. 4; 2003-142, s. 1; 2006-234, s. 6.)

Effect of Amendments. — Session Laws 2006-234, s. 6, effective January 1, 2007, and applicable to all primaries and elections held on or after January 1, 2007, added the last undesignated paragraph.

ARTICLE 11.

Nomination by Petition.

§ 163-122. Unaffiliated candidates nominated by petition.

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. — Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general

election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the

county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(b) Form of Petition. — Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ________________ COUNTY HEREBY PETITION ON BEHALF OF ________________ AS AN UNAFFILIATED CANDIDATE FOR THE OFFICE OF ________________ IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163-122."

(c) This section does not apply to elections under Article 25 of this Chapter.

(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(e) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50; 1977, c. 408, s. 3; 1979, c. 23, ss. 1, 3; c. 534, s. 2; 1981, c. 637; 1991, c. 297, s. 1; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 14; 1999-424, s. 5(b); 2002-159, s. 21(b); 2004-127, s. 8(a); 2006-155, s. 3; 2006-234, ss. 4, 5.)

Editor's Note. —

Subsection (e) was enacted as subsection (d) by Session Laws 2006-234, s. 5. It has been redesignated at the direction of the Revisor of Statutes.

Session Laws 2006-155, s. 7, is a severability clause.

Effect of Amendments. — Session Laws 2006-155, s. 3, effective January 1, 2007, and applicable to actions filed on or after January 1, 2007, added subsection (d).

Session Laws 2006-234, ss. 4 and 5, effective January 1, 2007, and applicable to all primaries and elections held on or after January 1, 2007, in subdivision (a)(1), substituted "voters who voted in the most recent general election for Governor" for "registered voters in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held" at the end of the second sentence and added the third sentence; and added the subsection designated herein as subsection (e).

§ 163-123. Declaration of intent and petitions for write-in candidates in partisan elections.

(a) Procedure for Qualifying as a Write-In Candidate. — Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

(b) Declaration of Intent. — The applicant for write-in candidacy shall file his declaration of intent at the same time and with the same board of elections as his petition, as set out in subsection (c) of this section. The declaration shall contain:

(1) Applicant's name,
(2) Applicant's residential address,
(3) Declaration of applicant's intent to be a write-in candidate,
(4) Title of the office sought,
(5) Date of the election,
(6) Date of the declaration,
(7) Applicant's signature.

(c) Petitions for Write-in Candidacy. — An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. Provided the petitions are timely submitted, the chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented.

(2) If the office is a district office comprising all or part of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before noon on the 90th day before the general election and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a

single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the 90th day before the general election and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(d) Form of Petition. — Petitions requesting the qualification of a write-in candidate in a general election shall contain on the heading of each page of the petition in bold print or in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ________________ COUNTY HEREBY PETITION ON BEHALF OF ________________________________ AS A WRITE-IN CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE LIST OF QUALIFIED WRITE-IN CANDIDATES WHOSE VOTES ARE TO BE COUNTED AND RECORDED IN ACCORDANCE WITH G.S. 163-123."

(e) Defeated Primary Candidate. — No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.

(f) Counting and Recording of Votes. — If a qualified voter has complied with the provisions of subsections (a), (b), and (c) and is not excluded by subsection (e), the board of elections with which petition has been filed shall count votes for him according to the procedures set out in G.S. 163-182.1, and the appropriate board of elections shall record those votes on the official abstract. Write-in votes for names other than those of qualified write-in candidates shall not be counted for any purpose and shall not be recorded on the abstract.

(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(g) Municipal and Nonpartisan Elections Excluded. — This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for elections under Article 25 of this Chapter. (1987, c. 393, ss. 1; 2; 1989, c. 92, s. 1; 1999-424, s. 5(c); 2001-319, s. 9(a); 2001-398, s. 7; 2001-403, s. 12; 2002-158, s. 13; 2004-127, s. 7; 2006-155, s. 4.)

Editor's Note. —

Session Laws 2006-155, s. 7, is a severability clause.

Effect of Amendments. —

Session Laws 2006-155, s. 4, effective January 1, 2007, and applicable to actions filed on or after January 1, 2007, added subsection (f1).

ARTICLE 11B.

Challenge to a Candidacy.

§ 163-127.1. Definitions.

As used in this Article, the following terms mean:

(1) Board. — State Board of Elections.

(2) Candidate. — A person having filed a notice of candidacy under the appropriate statute for any elective office in this State.

(3) Challenger. — Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. — The elected office for which the candidate has filed or petitioned. (2006-155, s. 1; 2006-259, s. 48(a).)

Editor's Note. — Session Laws 2006-155, s. 7, is a severability clause.

Session Laws 2006-155, s. 8, made this Article effective January 1, 2007, and applicable to actions filed on or after January 1, 2007.

Effect of Amendments. — Session Laws 2006-259, s. 48(a), effective January 1, 2007, substituted "the appropriate statute for any elective office in this State" for "Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes" at the end of subdivision (2).

§ 163-127.2. When and how a challenge to a candidate may be made.

(a) When. — A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the close of the filing period for notice of candidacy or petition.

(b) How. — The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. — If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9. (2006-155, s. 1.)

§ 163-127.3. Panel to conduct the hearing on a challenge.

Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. — If the district for the office subject to the challenge covers territory in all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire State. — If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of

members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel. A meeting of the Board to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143-318.12.

(3) Entire State. — If the district for the office subject to the challenge consists of the entire State, the panel shall be the Board. (2006-155, s. 1.)

Editor's Note. — This section, as enacted, contained a subsection (a) but no subsection (b). The subsection (a) designation has been removed at the direction of the Revisor of Statutes.

§ 163-127.4. Conduct of hearing by panel.

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. — The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. — The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for

witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to the panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. — The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by Board. — The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions. (2006-155, s. 1.)

§ 163-127.5. Burden of proof.

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile. (2006-155, s. 1.)

§ 163-127.6. Appeals.

(a) Appeals from Single or Multicounty Panel. — The decision of a panel created under G.S. 163-127.3(1) or G.S. 163-127.3(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office.

(b) Appeals from Statewide Panel. — The decision of a panel created under G.S. 163-127.3(3) may be appealed as of right to the Court of Appeals by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel. (2006-155, s. 1.)

Editor's Note. — The references throughout this section to G.S. 163-127.3(a)(1), (a)(2), and (a)(3) have been changed to G.S. 163-127.3(1), (2), and (3), respectively, at the direction of the Revisor of Statutes.

Session Laws 2006-155, s. 6, provides: "The North Carolina Supreme Court is respectfully requested to adopt rules necessary to implement the provisions as to appeal in G.S. 163-127.6."

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

ARTICLE 12.

Precincts and Voting Places.

§ 163-128. Election precincts and voting places established or altered.

(a) Each county shall be divided into a convenient number of precincts for the purpose of voting. Upon a resolution adopted by the county board of elections and approved by the Executive Director of the State Board of Elections voters from a given precinct may be temporarily transferred, for the purpose of voting, to an adjacent precinct. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one precinct to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the precinct in which such voters reside. The polling place for a precinct shall be located within the precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 45 days' notice thereof prior to the next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door and at the office of the county board of elections, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. No later than 30 days prior to the primary or election, the county board of elections shall mail a notice of precinct change to each registered voter who as a result of the change will be assigned to a different voting place.

(b) Each county board of elections shall prepare a map of the county on which the precinct boundaries are drawn or described, shall revise the map when boundaries are changed, and shall keep a copy of the current map on file and posted for public inspection at the office of the Board of Elections, and shall file a copy with the State Board of Elections. (Rev., s. 4313; 1913, c. 53; C.S., s. 5934; 1921, c. 180; 1933, c. 165, s. 3; 1967, c. 775, s. 1; 1969, c. 570; 1973, c. 793, ss. 51-53; 1975, c. 798, s. 2; 1979, c. 785; 1981, c. 515, s. 1; 1985, c. 757, s. 205(b);

1989, c. 93, s. 4; c. 440, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 33; 1995, c. 423, s. 1; 2001-353, s. 2; 2006-264, s. 20.)

Effect of Amendments. — Session Laws 2006-264, s. 20, effective August 27, 2006, substituted "Executive Director" for "Secretary-Director" in the second sentence of the first paragraph of subsection (a).

ARTICLE 12A.

Precinct Boundaries.

§ 163-132.1. Participation in 2000 Census Redistricting Data Program of the United States Bureau of the Census.

(a) Purpose. — The State of North Carolina shall participate in the 2000 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases), so that the State will receive 2000 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Phase I (Block Boundary Suggestion Program). — The State shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census so that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. The Legislative Services Office shall send preliminary maps produced by the Census Bureau in preparation for the 2000 Census, as soon as practical after the maps are available, to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a physical feature, a current township boundary, or a current municipal boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:

(1) Assist county boards of elections in identifying the precincts with boundaries not shown on the preliminary Census maps and in identifying physical features the county boards may wish to have available for future precinct boundaries;

(2) Place those boundaries and features on maps deemed appropriate by the State Board;

(3) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all physical features the county boards have identified as current or potential precinct boundaries; and

(4) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all other physical features already on 1990 Census maps.

(c) Phase II. — The State shall participate in Phase II of the 2000 Census Redistricting Data Program so that, to the extent practical, the precinct boundaries of all North Carolina counties will appear on the 2000 Census maps or database. The State's effort shall be conducted as follows:

(1) By January 1, 1998, or as soon thereafter as they become available, the Legislative Services Office shall provide the county boards of elections with access, on paper or electronically, to the Census Bureau's maps for Phase II of the Census Redistricting Data Program.

(2) After receiving the maps, the county boards of elections shall designate their precinct lines along the lines the Census Bureau indicates on the maps it will hold as block boundaries for the 2000 Census.

Where necessary, the county boards of elections shall alter precincts, including any precincts approved under the provisions of G.S. 163-132.1A, 163-132.2, or 163-132.3 or designated by local act, to conform to lines the Census Bureau indicates it will hold as Census block boundaries as shown on the official block maps to be used for the 2000 Census and to consist only of contiguous territory. The county boards of elections, at a time deemed necessary by the Executive Director of the State Board of Elections, shall file with the Legislative Services Office the maps on which they have designated their precincts pursuant to this subsection.

(3) After examining the maps, the Legislative Services Office shall submit to the Executive Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of this subsection, with notations as to where those boundaries do not comply with these standards.

(4) If the Executive Director determines that the county board of elections has complied, he shall approve the precinct boundaries as filed and those precincts shall be the official precincts.

(5) If the Executive Director determines that the county board of elections has not complied, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with 2000 Census block boundaries nearest to the precinct boundaries shown by the county boards on the maps. These altered precincts shall then be the official precincts.

(6) Upon the adoption of a resolution by a county board of elections and instead of altering precinct lines as required by G.S. 163-132.1(c)(5), the Executive Director may combine for Census reporting purposes only two or more adjacent precincts of the county into a Combined Reporting Unit, if the Executive Director finds that:

a. The boundaries of the Combined Reporting Unit conform with the Census block boundaries as shown on the official block maps to be used in the 2000 Census;

b. The Combined Reporting Unit consists only of contiguous territory;

c. The precincts of which the Combined Reporting Unit consists were bounded as of January 1, 1996, by ridgelines, as certified on official county maps by the county manager of the relevant county, or if there is no county manager the chair of the board of commissioners, and the boundaries failed to comply with subdivision (2) of this subsection only because those ridgelines were unrecognized as Census block boundaries in the 2000 official Census maps;

d. The Combined Reporting Unit does not contain a majority of the territory of more than one township; and

e. To alter those precinct boundaries would result in significant voter dislocation.

If the Executive Director recognizes a Combined Reporting Unit for specific precincts, the official boundaries of those individual precincts forming the Combined Reporting Unit shall be those which the Legislative Services Office submitted to the Executive Director under subdivision (3) of this subsection.

(7) The Executive Director shall file the completed maps with the Census Bureau and request that the Census Bureau provide summaries of 2000 Census data by precinct and Combined Reporting Units.

(d) Freezing of Precincts. —

(1) Notwithstanding the provisions of G.S. 163-132.3, after the Executive

Director approves the precincts in accordance with subsection (c) of this section and before January 2, 2002, no county board of elections may establish, alter, discontinue, or create any precinct except by division of one precinct into two or more precincts using lines that the Census Bureau has indicated it will use as 2000 Census block boundaries for that division. Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1998 Boundary and Annexation Survey or a subsequent edition of that survey and ending January 2, 2002, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the county board of elections may exercise one of the following options:

a. Direct by resolution that the annexed area is automatically moved into the "city precinct", provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts.

b. Adopt a resolution moving the precinct boundary to a line that the Census Bureau has indicated it will use as a 2000 block boundary.

(2) The Executive Director of the State Board of Elections may permit during the freeze a correction to a county's precincts as they were approved pursuant to subsection (c) of this section where one of the following sets of conditions is present:

a. A precinct was designated pursuant to subsection (c) inaccurately, and the United States Bureau of the Census agrees to include the corrected precinct on its database for the 2000 Census.

b. The boundary of a precinct designated pursuant to subsection (c) of this section was subsequently removed by the United States Bureau of the Census as an acceptable feature for a precinct line based upon a determination by the Bureau that the feature did not exist as shown, and the county board of elections agrees by resolution to an alternative boundary for the precinct on a feature the Bureau does find acceptable.

(3) The county board of elections may move a precinct line from a township line to another line the Census Bureau has indicated will be a 2000 block boundary if a Boundary and Annexation Survey issued during the freeze shows that the township line has moved to a location the county board of elections considers unsuitable. This subdivision does not apply if local legislation enacted by the General Assembly governs the relationship between a county's township lines and precinct lines.

(4) The county board of elections shall submit any proposed change made during the freeze under this subsection to the Legislative Services Office, which shall review the proposal and write a letter advising the Executive Director of its opinion as to the legal compliance of the proposal. If the proposal complies with the law, the Executive Director shall approve the proposal. No newly created or altered precinct boundary is effective until approved by the Executive Director as being in compliance with the provisions of this subsection.

(d1) Right to Postpone Effective Date Until January 1, 2000. — A county board of elections may postpone the effective date of the precincts designated in Phase II until January 1, 2000.

(d2) Special Permission to Postpone Effective Date Until January 1, 2001. — The Executive Director may permit a county board of elections to postpone the effective date of precinct lines designated under Phase II until January 1, 2001, upon written application by the county board of elections, if the Executive Director finds both of the following:

(1) That the Phase II-designated lines would create a split precinct in 2000 for county commissioner, board of education, judicial, State legislative, or congressional district elections and that a split could be avoided by using the pre-Phase II precinct.

(2) That the county can provide reasonably reliable voter registration data for April and October of 2000 by the Phase II-designated precincts.

In granting an exception under this subsection, the Executive Director shall allow an exception only for the precincts that would result in splits and for any adjacent precincts for which pre-Phase II precincts must be used to avoid geographic overlap or discontinuity. Every county board of elections granted an exception under this subsection shall provide to the State Board of Elections voter registration data for April and October of 2000 by the Phase II-designated precincts.

(e) Municipal and Township Boundaries. — Notwithstanding the provisions of subsections (c) and (d) of this section, the county boards of elections may designate precinct boundaries on municipal or township boundaries that are not designated on the 2000 official Census block maps, according to directives promulgated by the Executive Director of the State Board of Elections and adopted to insure that all precincts shall be included on the 2000 Census database.

(f) Additional Rules. — In addition to the directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 69; 1995, c. 423, s. 2; 1999-227, s. 1; 2000-140, s. 81; 2001-319, s. 11; 2005-428, s. 16; 2006-264, s. 75.5(a).)

Editor's Note. —

Session Laws 2005-428, s. 16, effective September 22, 2005, and applicable to all primaries and elections held on or after that date, in the section heading, substituted "2010" for "2000"; in subsection (a), deleted "including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases)" following "Bureau of the Census" and twice substituted "2010" for "2000"; and repealed subsections (b) through (e). Session Laws 2006-264, s. 75.5(a), repealed Session Laws 2005-428, s. 16, effective August 27, 2006. The section, as set out above, appears as it did prior to the 2005 amendments.

§ 163-132.1B. Participation in 2010 Census Redistricting Data Program of the United States Bureau of the Census.

(a) Purpose. — The State of North Carolina shall participate in the 2010 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, so that the State will receive 2010 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Additional Rules. — In addition to directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section. (2006-264, s. 75.5(b).)

Editor's Note. — Session Laws 2006-264, s. 103, made this section effective August 27, 2006.

ARTICLE 14A.

Voting.

Part 1. Definitions.

§ 163-165. Definitions.

In addition to the definitions stated below, the definitions set forth in Article 15A of Chapter 163 of the General Statutes also apply to this Article. As used in this Article:

(1) "Ballot " means an instrument on which a voter indicates a choice so that it may be recorded as a vote for or against a certain candidate or referendum proposal. The term "ballot " may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, the face of a lever voting machine, the image on a direct record electronic unit, or a ballot used on any other voting system.

(2) "Ballot item " means a single item on a ballot in which the voters are to choose between or among the candidates or proposals listed.

(3) "Ballot style " means the version of a ballot within a jurisdiction that an individual voter is eligible to vote. For example, in a county that uses essentially the same official ballot, a group office such as county commissioner may be divided into districts so that different voters in the same county vote for commissioner in different districts. The different versions of the county's official ballot containing only those district ballot items one individual voter may vote are the county's different ballot styles.

(4) "Election " means the event in which voters cast votes in ballot items concerning proposals or candidates for office in this State or the United States. The term includes primaries, general elections, referenda, and special elections.

(5) "Official ballot " means a ballot that has been certified by the State Board of Elections and produced by or with the approval of the county board of elections. The term does not include a sample ballot or a specimen ballot.

(6) "Provisional official ballot" means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote. Except for its envelope, a provisional official ballot shall not be marked to make it identifiable to the voter.

(7) "Referendum" means the event in which voters cast votes for or against ballot questions other than the election of candidates to office.

(8) "Voting booth " means the private space in which a voter is to mark an official ballot.

(9) "Voting enclosure " means the room within the voting place that is used for voting.

(10) "Voting place " means the building that contains the voting enclosure.

(11) "Voting system " means a system of casting and tabulating ballots. The term includes systems of paper ballots counted by hand as well as systems utilizing mechanical and electronic voting equipment. (2001-460, s. 3; 2001-466, s. 3(a), (b); 2002-159, s. 21(h); 2006-262, s. 4.)

Editor's Note. — Session Laws 2006-262, s. 5 provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-262, s. 4, effective January 1, 2007, added the last sentence in subdivision (6).

Part 2. Ballots and Voting Systems.

§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

(a) Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board of Elections shall certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. The State Board may certify additional voting systems only if they meet the requirements of the request for proposal process set forth in this section and only if they generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting systems. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. Among other requirements, the request for proposal shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages shall include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct as required by G.S. 163-132.5G.

(4) With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.

(5) With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.

(6) With respect to all voting systems using electronic means, that the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163-165.9A for review and examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party recognized under G.S. 163-96; the purchasing county; and designees as provided in subdivision (9) of subsection (d) of this section.

(7) That the vendor must quote a statewide uniform price for each unit of the equipment.

(8) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.

In its request for proposal, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

If a voting system was acquired or upgraded by a county before August 1, 2005, the county shall not be required to go through the purchasing process described in this subsection if the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (6) and subdivision (8) of this subsection, where those requirements are applicable to the type of voting system involved. If the county cannot demonstrate to the State Board of Elections that the voting system is in compliance with those subdivisions, the county board shall not use the system in an election during or after 2006, and the county shall be subject to the purchasing requirements of this subsection.

(a1) Federal Assistance. — The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002.

(b) The State Board may also, upon notice and hearing, decertify types, makes, and models of voting systems. Upon decertifying a type, make, or model of voting system, the State Board shall determine the process by which the decertified system is discontinued in any county. A county may appeal a decision by the State Board concerning the process by which the decertified system is discontinued in that county to the Superior Court of Wake County. The county has 30 days from the time it receives notice of the State Board's decision on the process by which the decertified system is discontinued in that county to make that appeal.

(c) Prior to certifying a voting system, the State Board of Elections shall review, or designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with State and federal law. At a minimum, the State Board's review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system. Any portion of the report containing specific information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be confidential and shall be accessed only under the rules adopted pursuant to subdivision (9) of subsection (d) of this section. The State Board may hear and discuss the report of any such review under G.S. 143-318.11(a)(1).

(d) Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, including all of the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a certified voting system for use in that county.
(2) Form of official ballot labels to be used on voting systems.
(3) Operation and manner of voting on voting systems.
(4) Instruction of precinct officials in the use of voting systems.
(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination and testing of voting systems in a public forum in the county before and after use in an election.
(9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:
  a. State Board of Elections.
  b. Office of Information Technology Services.
  c. The State chairs of each political party recognized under G.S. 163-96.
  d. The purchasing county.

  Each person listed in sub-subdivisions a. through d. of this subdivision may designate up to three persons as that person's agents to review and examine the information. No person shall designate under this subdivision a business competitor of the vendor whose proprietary information is being reviewed and examined. For purposes of this review and examination, any designees under this subdivision and the State party chairs shall be treated as public officials under G.S. 132-2.
(10) With respect to electronic voting systems, procedures to maintain the integrity of both the electronic vote count and the paper record. Those procedures shall at a minimum include procedures to protect against the alteration of the paper record after a machine vote has been recorded and procedures to prevent removal by the voter from the voting enclosure of any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.
(11) Compliance with section 301 of the Help America Vote Act of 2002.

Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.

(e) The State Board of Elections shall facilitate training and support of the voting systems utilized by the counties. (2001-460, s. 3; 2003-226, s. 11; 2005-323, s. 1(a)-(d); 2006-264, s. 76(a).)

Editor's Note. —
Session Laws 2006-192, s. 1(a) and (b), provides: "(a) The State Board of Elections shall select local jurisdictions in which to conduct a

pilot program during the 2007 and 2008 elections for local offices using instant runoff voting. The State Board shall select:

"(1) Up to 10 cities for the 2007 elections.

"(2) Up to 10 counties for the 2008 elections.

"In selecting those local jurisdictions, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted only with the concurrence of the county board of elections that conducts elections for the local jurisdiction. If a city is selected that has voters in more than one county, the concurrence of all the county boards of elections that conduct that city's elections is required. The pilot program shall consist of using instant runoff voting as the method for determining the winner or winners of a partisan primary or a nonpartisan election that normally uses nonpartisan election and runoff or nonpartisan primary and election. Instant runoff voting may also be used to determine results in an election where nonpartisan plurality elections are normally used, but only if the governing board of the local jurisdiction concurs.

"As used in this section, 'instant runoff voting' means a system in which voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the most first-choice votes receives the threshold of victory of the first-choice votes, that candidate wins. If no candidate receives the threshold of victory of first-choice votes, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election.

"The threshold of victory of first-choice votes for a partisan primary shall be forty percent (40%) plus one vote. The threshold of victory for a nonpartisan election and runoff or nonpartisan primary and election shall be a majority of the vote. The threshold of victory in a contest that normally uses nonpartisan plurality shall be determined by the State Board with the concurrence of the county board of elections and the local governing board.

"If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first counting results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won.

"Other details of instant runoff voting are as described in House Bill 1024 (First Edition) of the 2005 Regular Session of the General Assembly, with modifications the State Board deems necessary, in primaries and/or elections for city offices, for county offices, or for both. Those modifications may include giving the voter more than three choices in case of multiseat contests. The State Board shall not use instant runoff voting in a primary or election for an office unless the entire electorate for the office uses the same method.

"(b) The State Board of Elections shall closely monitor the pilot program established in this section and report its findings and recommendations to the 2007 General Assembly."

Effect of Amendments. —

Session Laws 2006-264, s. 76(a), effective August 27, 2006, rewrote the last paragraph of subsection (a).

ARTICLE 15A.

Counting Official Ballots, Canvassing Votes, Hearing Protests, and Certifying Results.

§ 163-182.1. Principles and rules for counting official ballots.

(a) General Principles That Shall Apply. — The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

(1) Only official ballots shall be counted.

(2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.

(3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be

counted in all other ballot items in which the voter's choice can be clearly determined.

(4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.

(5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.

(6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:
   a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.
   b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.
   c. The voter's choice can be clearly determined.

(7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:
   a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.
   b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.
   c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:
      1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.
      2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.
      3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

(b) Procedures and Standards. — The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least

15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, full counts of one or more one-stop early voting sites, or a combination. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:
   a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
   b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
   c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted. (2001-398, s. 3; 2003-226, s. 13; 2005-323, s. 5(a); 2006-192, s. 7(a); 2006-264, s. 76(b).)

Effect of Amendments. —

Session Laws 2006-192, s. 7(a), effective August 3, 2006, added the fourth and fifth sentences in subdivision (b)(1).

Session Laws 2006-264, s. 76(b), effective August 27, 2006, in the fourth (now seventh sentence) sentence of subdivision (b)(1), inserted "one or more", inserted "mailed", substituted "full counts of one or more" for "and full counts", and substituted "sites, or a combination" for "sites" at the end.

§ 163-182.2. Initial counting of official ballots.

(a) The initial counting of official ballots shall be conducted according to the following principles:

(1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.

(2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.

(3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.

(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote. Eligibility shall be determined by whether the voter is registered in the county as provided in G.S. 163-82.1 and whether the voter is qualified by residency to vote in the election district as provided in G.S. 163-55 and G.S. 163-57. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163-82.15 or G.S. 163-166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote.

(5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(6) In counties that use any certified mechanical or electronic voting system, subject to the sample counts under G.S. 163-182.1 and subdivision (1a) of subsection (b) of this section, and of a hand-to-eye recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye count of the paper ballots or records. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count or recount, the hand-to-eye count or recount shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, and full counts of one or more one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted. The sample count need not be done on election night.

(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances. (2001-398, s. 3; 2005-2, s. 5; 2005-323, s. 5(b); 2006-192, s. 7(b); 2006-264, s. 76(c).)

Effect of Amendments. —

Session Laws 2006-192, s. 7(b), effective August 3, 2006, added the fourth and fifth sentences in subdivision (b)(1a).

Session Laws 2006-264, s. 76(c), effective August 27, 2006, in subdivision (b)(1a), in the fourth sentence, inserted "one or more" twice and "mailed" preceding "absentee ballots", and added the last sentence.

SUBCHAPTER VII. ABSENTEE VOTING.

ARTICLE 20.

Absentee Ballot.

§ 163-234. Counting absentee ballots by county board of elections.

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope shall be counted, except to the extent federal law requires otherwise.

(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m.

(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be

provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1967, c. 775, s. 1; c. 851, s. 2; 1973, c. 536, s. 1; 1975, c. 798, s. 3; 1977, c. 469, s. 1; c. 626, s. 1; 1989, c. 93, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 55; 1995, c. 243, s. 1; 1999-455, s. 14; 2005-159, s. 1; 2006-262, s. 1.)

Editor's Note. —

Session Laws 2006-262, s. 5, provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 2006-262, s. 1, effective August 27, 2006, except that any criminal penalty resulting from this act becomes effective October 1, 2006, added subdivision (2a).

Article 21.

Military Absentee Registration and Voting in Primary and General Elections.

§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail or to vote by absentee ballot or both in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

(1) Individuals serving in the armed forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.

(2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.

(3) Disabled war veterans in United States government hospitals.

(4) Civilians attached to and serving outside the United States with the armed forces of the United States.

(5) Members of the Peace Corps.

(6) Other individuals meeting the definitions of "absent uniformed services voter" and "overseas voter" in the federal Uniformed and Overseas Citizens Absentee Voting Act.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request, and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act. (1941, c. 346, ss. 1, 1a; 1943, c. 503, s. 1; 1945, c. 758, s. 4; 1953, c. 908; 1963, c. 457, s. 16; 1967, c. 775, s. 1; 1973, c. 793, s. 71; 2001-466, s. 4(a); 2003-226, s. 19; 2006-192, s. 6.)

Effect of Amendments. — Session Laws 2006-192, s. 6, effective August 3, 2006, in subsection (a), substituted "or" for "and", deleted "military" preceding "absentee", and added "or both"; and added subdivision (b)(6).

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

Article 22.

Corrupt Practices and Other Offenses Against the Elective Franchise.

§ 163-274. Certain acts declared misdemeanors.

CASE NOTES

Cited in Grant v. Miller, 170 N.C. App. 184, 611 S.E.2d 477, 2005 N.C. App. LEXIS 902 (2005).

Article 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

§ 163-278.6. Definitions.

When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of "radio" and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, has otherwise qualified as a candidate in a manner authorized by law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of

"candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of "print media," "radio," and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term "corporation" means any corporation established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of

Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee.

(9a) The term "independently expend" or "independent expenditure" means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term "independent expenditure" applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in

dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

Special definitions of "political action committee" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of "political party organization" that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

(16) Repealed by Session Laws 1999-31, s. 4.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term "referendum committee" means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a "referendum committee" under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A. (1973, c. 1272, s. 1; 1975, c. 798, ss. 5, 6; 1979, c. 500, s. 1; c. 1073, ss. 1-3, 19, 20; 1981, c. 837, s. 1; 1983, c. 331, s. 6; 1985, c. 352, ss. 1-3; 1997-515, ss. 4(a)-(c), 7(b)-(d); 1999-31, ss. 1(a), (b), 2(a)-(c), 3, 4(a); 1999-424, s. 6(a), (b); 2002-159, s. 55(n); 2003-278, s. 5; 2004-125, s. 3; 2004-127, s. 15; 2004-203, s. 12(b); 2005-430, s. 10; 2006-264, s. 23.)

Effect of Amendments. —

Session Laws 2004-127, s. 15, as amended by Session Laws 2006-264, s. 23, effective July 26, 2004, deleted the former last sentence of subdivision (9) which read: "The special definition of 'expenditure' in G.S. 163-278.12A applies only in that section."

§ 163-278.7. Appointment of political treasurers.

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. — When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the candidate, political committee, or referendum committee and shall be fully responsible for any act or acts committed by the assistant treasurer. The treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training.

(f) Every treasurer of a political committee shall participate in training as to the duties of the office within three months of appointment and at least once every four years thereafter. The State Board of Elections shall provide the training as to the duties of the office in person, through regional seminars, and through interactive electronic means. The treasurer may designate an assistant treasurer to participate in the training, if one is named under subdivision (b)(8) of this section. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the treasurer and assistant treasurer. (1973, c. 1272, s. 1; 1979, c. 500, s. 2; c. 1073, ss. 4, 5, 16, 18, 20; 1987, c. 113, s. 1; 1995, c. 315, s. 1; 2002-159, s. 57.1(a); 2004-203, s. 59(a); 2005-430, s. 10.1; 2006-195, s. 7.)

Effect of Amendments. —

Session Laws 2006-195, s. 7, effective October 1, 2006, rewrote subdivision (b)(8) which read: "The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and" and rewrote subsection (f) which read: "The State Board of Elections shall provide training for every treasurer of a political committee, prior to the election in which the political committee is involved, as to the duties of the office. The State Board of Elections shall provide each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing training as to the duties of the office, and shall conduct regional seminars for in-person training. All such training shall be free of charge to the treasurer."

§ 163-278.8. Detailed accounts to be kept by political treasurers.

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee. The accounts shall include the information required by the State Board of Elections on its forms.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) Repealed by Session Laws 2004-125, s. 5(a), effective July 20, 2004, and applicable to contributions made on or after January 1, 2003.

(d) Repealed by Session Laws 2006-195, s. 4, effective January 1, 2007, and applicable to all contributions made and accepted on or after that date.

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately with specific descriptions to provide a reasonable understanding of the expenditure.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a non media expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers. (1973, c. 1272, s. 1; 1977, c. 635, s. 1; 1979, c. 1073, ss. 16, 20; 1981, c. 814, s. 1; 1985, c. 353, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 744, s. 1; 1999-424, s. 7(m); 2004-125, s. 5(a); 2005-430, ss. 2, 3; 2006-161, ss. 2, 3; 2006-195, s. 4.)

Effect of Amendments. —

Session Laws 2006-161, ss. 2 and 3, effective January 1, 2007, and applicable to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after January 1, 2007, added "with specific descriptions to provide a reasonable understanding of the expenditure" at the end of the second sentence in subsection (e); and, in subsection (f), in the fourth sentence, inserted "with a specific description to provide a reasonable understanding of the expenditure," in the middle and substituted "the treasurer" for "he" near the end, and inserted "with a specific description to provide a reasonable understanding of the expenditure" in the middle of the last sentence.

Session Laws 2006-195, s. 4, effective January 1, 2007, and applicable to all contributions made and accepted on and after January 1, 2007, added the last sentence in subsection (a) and deleted former subsection (d) which read: "A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars ($100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars ($100.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of one hundred dollars ($100.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars ($100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars ($100.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars ($100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt."

§ 163-278.9. Statements filed with Board.

(a) Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file with the Board under certification of the treasurer as true and correct to the best of the knowledge of that officer the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organiza-

tional report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Repealed by Session Laws 1999-31, s. 7(a), effective January 1, 2000.

(3) Postprimary Report(s). — Repealed by Session Laws 1997-515, s. 1.

(4) Preelection Report. — Repealed by Session Laws 1997-515, s. 1.

(4a) 48-Hour Report. — A political committee or political party that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received before an election but after the period covered by the last report due before that election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of the funds. The State Board of Elections shall specify the form and manner of making the report.

(5) Repealed by Session Laws 1985, c. 164, s. 1.

(5a) Quarterly Reports. — During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be filed; and

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) Semiannual Reports. — If contributions are received or expenditures made for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported.

(c) Repealed by Session Laws 1985, c. 164, s. 6.1.

(d) Candidates and committees for municipal offices are not subject to subsections (a), (b) and (c) of this section. Reports for those candidates and committees are covered by Part 2 of this Article.

(e) Notwithstanding subsections (a) through (c) of this section, any political party (including a State, district, county, or precinct committee thereof) which is required to file reports under those subsections and under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434), shall instead of filing the reports required by those subsections, file with the State Board of Elections:

(1) The organizational report required by subsection (a)(1) of this section, and

(2) A copy of each report required to be filed under 2 U.S.C. 434, such copy to be filed on the same day as the federal report is required to be filed.

(f) Any report filed under subsection (e) of this section may include matter required by the federal law but not required by this Article.

(g) Any report filed under subsection (e) of this section must contain all the information required by G.S. 163-278.11, notwithstanding that the federal law may set a higher reporting threshold.

(h) Any report filed under subsection (e) of this section may reflect the cumulative totals required by G.S. 163-278.11 in an attachment, if the federal law does not permit such information in the body of the report.

(i) Any report or attachment filed under subsection (e) of this section must be certified.

(j) Treasurers for the following entities shall electronically file each report required by this section that shows a cumulative total for the election cycle in excess of five thousand dollars ($5,000) in contributions, in expenditures, or in loans, according to rules adopted by the State Board of Elections:

(1) A candidate for statewide office;

(2) A State, district, county, or precinct executive committee of a political party, if the committee makes contributions or independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office;

(3) A political committee that makes contributions in excess of five thousand dollars ($5,000) to candidates for statewide office or makes independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office.

The State Board of Elections shall provide the software necessary to file an electronic report to a treasurer required to file an electronic report at no cost to the treasurer.

(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163-278.7(f). (1973, c. 1272, s. 1; 1975, c. 565, s. 1; 1979, c. 500, ss. 3, 16; c. 730; 1981, c. 837, s. 2; 1985, c. 164, ss. 1, 6-6.2; 1987 (Reg. Sess., 1988), c. 1028, s. 6; 1991 (Reg. Sess., 1992), c. 1032, s. 10A; 1997-515, ss. 1(a), 4(d1), 5(a), 12(a); 1999-31, s. 7(a), (b); 2001-235, s. 2; 2001-419, s. 7; 2001-487, s. 97(b); 2002-159, s. 21(d); 2006-195, ss. 5.1, 8.)

Effect of Amendments. — Session Laws 2006-195, s. 8, effective October 1, 2006, added subsection (k); and, s. 5.1, effective January 1, 2007, and applicable to all contributions made and accepted on and after January 1, 2007, deleted "G.S. 163-278.8 or" in the middle of subsection (g).

§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) Contributions. — Except as provided in subsection (a1) of this section, a list of all contributions received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, "principal occupation of the contributor" means the contributor's:

a. Job title or profession; and

b. Employer's name or employer's specific field of business activity.

The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

(2) Expenditures. — A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.

(3) Loans. — Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(a1) Threshold for Reporting Identity of Contributor. — A treasurer shall not be required to report the name, address, or principal occupation of any individual resident of the State who contributes fifty dollars ($50.00) or less to the treasurer's committee during an election as defined in G.S. 163-278.13. The State Board of Elections shall provide on its reporting forms for the reporting of contributions below that threshold. On those reporting forms, the State Board may require date and amount of contributions below the threshold, but may treat differently for reporting purposes contributions below the threshold that are made in different modes and in different settings.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

(c) Best Efforts. — When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article. The State Board of Elections shall promulgate rules that specify what are "best efforts" for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include a provision that if the treasurer, after complying with this Article and the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report "unable to obtain". (1973, c. 1272, s. 1; 1977, c. 635, s. 2; 1979, c. 1073, s. 20; 1997-515, ss. 2(a), (b), 3(a); 2006-161, s. 4; 2006-195, s. 5.)

Effect of Amendments. — Session Laws 2006-161, s. 4, effective January 1, 2007, and applicable to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after January 1, 2007, added the last three sentences in subdivision (a)(2).

Session Laws 2006-195, s. 5, effective January 1, 2007, and applicable to all contributions made and accepted on or after January 1, 2007, in the first sentence of subdivision (a)(1), substituted "Except as provided in subsection (a1) of this section, a" for "A" and deleted "required to be listed under G.S. 163.278.8" following "contributions"; added subsection (a1); and, in subsection (c), added "and shall not be the basis for criminal prosecution or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article" at the end of the first sentence and, in the last sentence, substituted "a provision" for "the provision" and inserted "this Article and" near the middle.

§ 163-278.13. Limitation on contributions.

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(e) Except as provided in subsections (e2) and (e3) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) No candidate shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for rescue funds" defined in G.S. 163-278.62(18). This subdivision applies with respect to a candidate opposed in the general election by a certified candidate as defined in Article 22D of this Chapter who has not received the maximum rescue funds available under G.S. 163-278.67. The recipient of a contribution that apparently violates this subdivision has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subdivision.

As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000), except as provided in subsection (c) of this section. As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor. (1973, c. 1272, s. 1; 1979, c. 1073, ss. 8, 20; 1981, c. 225; 1987, c. 565, s. 15; 1993, c. 539, s. 1113; 1994, Ex. Sess., c. 24, s. 14(c); 1997-515, s. 8(a); 1999-31, s. 5(c); 2002-158, s. 2; 2006-192, ss. 15, 16, 17.)

Effect of Amendments. — Session Laws 2006-192, s. 16, effective August 3, 2006, added "if that contribution causes the candidate to exceed the 'trigger for rescue funds' defined in G.S. 163-278.62(18)" at the end of the first sentence of subdivision (e2)(3); s. 15, effective August 3, 2006, and effective January 1, 2007, and applicable to contributions made or accepted on or after that date, as that section affects G.S. 163-278.13(e3), substituted "Except as provided in subsections (e2) and (e3) of this section, this" for "This" at the beginning of subsection (e); and, s. 17, effective January 1, 2007, and applicable to contributions made or accepted on or after January 1, 2007, added subsection (e3).

§ 163-278.13B. Limitation on fund-raising during legislative session.

(a) Definitions. — For purposes of this section:

(1) "Limited contributor" means a lobbyist registered under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120C-100(11) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered under Chapter 120C of the General Statutes.

(2) "Limited contributee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly.

(3) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is "made" during regular session if the check or other

instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is "accepted" during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. — While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a limited contributor or relay to the limited contributor the limited contributee's solicitation of a contribution.

It shall not be deemed a violation of this section for a limited contributee to serve on a board or committee of an organization that makes a solicitation of a limited contributor as long as that limited contributee does not directly participate in the solicitation and that limited contributee does not directly benefit from the solicitation.

(c) Prohibited Contributions. — While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee or the real or purported agent of a limited contributee prohibited from solicitation by subsection (b) of this section shall accept a contribution from a limited contributor.

(5) No limited contributor shall solicit a contribution from any individual or political committee on behalf of a limited contributee. This subdivision does not apply to a limited contributor soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(d) Exception. — The provisions of this section do not apply with regard to a limited contributee during the three weeks prior to the day of a second primary if that limited contributee is a candidate who will be on the ballot in that second primary.

(e) Prosecution. — A violation of this section is a Class 2 misdemeanor. (1997-515, s. 9(b); 1999-31, s. 5(d); 1999-453, s. 6(a); 2000-136, s. 1; 2006-201, s. 21.)

Editor's Note. —

Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-201, s. 21, effective January 1, 2007, in subdivision (a)(1), substituted "under Chapter 120C" for "pursuant to Article 9A of Chapter 120", substituted "G.S. 120C-100(11)" for "G.S. 120-47.1(7)," in the middle, and substituted "under Chapter 120C" for "pursuant to Article 9A of Chapter 120" near the end.

§ 163-278.14. No contributions in names of others; no anonymous contributions; contributions in excess of one hundred dollars.

(a) No individual, political committee, or other entity shall make any contribution anonymously or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously. If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina.

(b) No entity shall make, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of fifty dollars ($50.00) unless such contribution is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No contribution in the form of check, draft, money order, credit card charge, debits, or other noncash method may be made or accepted unless it contains a specific designation of the intended contributee chosen by the contributor. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record.

(c) No political committee or referendum committee shall make any contribution unless in doing so it reports to the recipient the contributor's name as required in G.S 163-278.7(b)(1). (1973, c. 1272, s. 1; 1979, c. 1073, s. 19; 1987, c. 113, s. 2; 1999-453, s. 4(a); 2001-319, s. 10(a); 2002-159, s. 55(k); 2004-125, s. 5(b); 2005-430, s. 1; 2006-195, ss. 1, 5.2.)

Effect of Amendments. —

Session Laws 2006-195, ss. 1 and 5.2, effective January 1, 2007, and applicable to all contributions made and accepted on and after January 1, 2007, in subsection (a), deleted "except as provided in G.S. 163-278.8(d)" following "anonymously" in the first and second sentence and made a minor punctuation change; and, in subsection (b), in the first sentence, substituted "make" for "give" near the beginning, substituted "fifty dollars ($50.00)" for "one hundred dollars ($100.00)" and substituted "is in" for "be in", and added the second sentence.

§ 163-278.15. No acceptance of contributions made by corporations, foreign and domestic, or other prohibited sources.

(a) No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina, or made by any business entity, labor union, professional association, or insurance company. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f).

(b) A candidate or political committee may accept a contribution knowing that the contribution is the proceeds of a loan made in the ordinary course of business by a financial institution if all of the following conditions are met:

(1) The full amount of the loan is secured by collateral placed, or by guaranties given, by one or more individuals or entities who are not prohibited by this Article from making contributions to the candidate or political committee. The value of the collateral posted by each individual or entity, or the amount of each guaranty, may not exceed the contribution limitations applicable under this Article to each individual or entity. The value of collateral posted may exceed the contribution limitations applicable under this Article in cases where the amount of the loan secured by that collateral does not exceed the contribution limitations applicable to the individual or entity.

(2) During the time that any loan remains outstanding and unpaid, then the value of any collateral posted, or the amount of each guaranty, for that loan shall be considered to be a contribution by the individual or entity securing the loan. If the loan, or any portion of the loan, is repaid to the financial institution by the candidate or political committee to whom the loan was made during the contribution limitation period for the same "election" as defined in G.S. 163-278.13(d) in which the loan was made, the individual or entity securing the loan shall be eligible to further contribute to that candidate or political committee up to the amount of the repayment. If multiple individuals or entities secured the loan that is repaid to the financial institution by the candidate or political committee, then the amount repaid shall be prorated amongst the multiple individuals or entities.

(3) If the loan is to the candidate or political committee, only the candidate, the candidate's spouse, or the political committee to whom the loan was made may repay the loan.

The State Board of Elections shall develop forms for reporting the proceeds of loans in a full and accurate manner. (1973, c. 1272, s. 1; 1999-31, s. 5(e); 2006-195, s. 6; 2006-262, s. 4.1(c).)

Editor's Note. — Session Laws 2006-262, s. 5, provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-262, s. 4.1(c), effective August 27, 2006, designated the existing provisions as subsection (a) and added subsection (b).

Session Laws 2006-195, s. 6, effective January 1, 2007, and applicable to all contributions made and accepted on and after January 1, 2007, added "or other prohibited sources" at the end of the section catchline, added "or made by any business entity, labor union, professional association, or insurance company" at the end of the first sentence, and made minor punctuation changes.

§ 163-278.16B. Use of contributions for certain purposes.

(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.
(2) Expenditures resulting from holding public office.
(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
(5) Contributions to another candidate or candidate's campaign committee.
(6) To return all or a portion of a contribution to the contributor.
(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.
(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

(b) As used in this section, the term "candidate campaign committee" means the same as in G.S. 163-278.38Z(3).

(c) Contributions made to a candidate or candidate campaign committee do not become a part of the personal estate of the individual candidate. A candidate or the candidate who directs the candidate campaign committee may file with the board a written designation of those funds that directs to which of the permitted uses in subsection (a) of this section they shall be paid in the event of the death or incapacity of the candidate. After the payment of permitted outstanding debts of the account, the candidate's filed written designation shall control. If the candidate files no such written designation, the funds after payment of permitted outstanding debts shall be distributed in accordance with subdivision (a)(8) of this section. (2006-161, s. 1.)

Editor's Note. — Session Laws 2006-161, s. 6, made this section effective October 1, 2006, and applicable to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after October 1, 2006.

§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies.

(a) Except as provided in subsections (a2), (b), (d), (e), (f), and (g) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:
(1) To make any contribution to a candidate or political committee or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;
(2) To pay or use or offer, consent or agree to pay or use any of its money or property for any contribution to a candidate or political committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or
(3) To compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so made;

and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof.

(a1) A transfer of funds shall be deemed to have been a contribution or expenditure made indirectly if it is made to any committee or political party account, whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office.

(a2) Proceeds of loans made in the ordinary course of business by financial institutions may be used for contributions made in compliance with this Chapter. Financial institutions may also grant revolving credit to political committees and referendum committees in the ordinary course of business.

(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S. 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever.

(c) A violation of this section is a Class 2 misdemeanor. In addition, the acceptance of any contribution, expenditure, payment, reimbursement, indemnification, or anything of value under subsection (a) shall be a Class 2 misdemeanor.

(d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney, agent, or employee of any corporation, business entity, labor union, professional association or insurance company, and by virtue of his position therewith uses office space and communication facilities of the corporation, business entity, labor union, professional association or insurance company in the normal and usual scope of his employment, the fact that the candidate or treasurer receives telephone calls, mail, or visits in such office which relates to activities prohibited by this Article shall not be considered a violation under this section.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include record keeping, computer services, billings, mailings to members of the committee, membership development, fund-raising activities, office supplies, office space, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any reasonable administrative support shall be submitted to the committee, in writing, and the committee shall include that cost on the report required by G.S. 163-278.9(a)(6). Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The reasonable administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes.

(f) This section does not prohibit a contribution or independent expenditure by an entity that:

(1) Has as an express purpose promoting social, educational, or political ideas and not to generate business income;

(2) Does not have shareholders or other persons which have an economic interest in its assets and earnings; and

(3) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues in a calendar year.

(g) If a political committee has as its only purpose accepting contributions and making expenditures to influence elections, and that political committee incorporates as a nonprofit corporation to shield its participants from liability created outside this Chapter, that political committee is not considered to be a corporation for purposes of this section. Incorporation of a political committee does not relieve any individual, person, or other entity of any liability, duty, or obligation created pursuant to any provision of this Chapter. To obtain the benefits of this subsection, an incorporating political committee must state exactly the following language as the only purpose for which the corporation can be organized: "to accept contributions and make expenditures to influence elections as a political committee pursuant to G.S. 163-278.6(14) only." No political committee shall do business as a political committee after incorporation unless it has been certified by the State Board of Elections as being in compliance with this subsection. (1973, c. 1272, s. 1; 1975, c. 565, s. 6; 1979, c. 517, ss. 1, 2; 1985, c. 354; 1987, c. 113, s. 3; c. 565, s. 16; 1993, c. 539, ss. 1115, 1116; c. 553, s. 69; 1994, Ex. Sess., c. 24, s. 14(c); 1999-31, ss. 4(d), 5(a), 6(b); 2001-487, s. 97(a); 2002-159, s. 57.3(a), (b); 2006-195, s. 3; 2006-262, ss. 4.1(a), (b), 4.3.)

Editor's Note. — Session Laws 2006-262, s. 5 provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-195, s. 3, effective January 1, 2007, and applicable to contributions made and accepted on or after January 1, 2007, deleted "except as provided in G.S. 163-278.20," following "political purposes," in the middle of subsection (b).

Session Laws 2006-262, ss. 4.1(a) and (b) and 4.3, effective August 27, 2006, except that any criminal penalty resulting from this act becomes effective October 1, 2006, in subsection (a), inserted "(a2)," near the beginning of the introductory paragraph and deleted "(except a loan of money by a national or State bank or federal or State savings and loan association made in accordance with the applicable banking or savings and loan association laws and regulations and in the ordinary course of business)" following "political committee" near the beginning of subdivision (a)(1); added subsection (a2); and, in subsection (e), in the first paragraph, deleted ", but not be limited to," following "include" and inserted "membership development, fund-raising activities, office supplies, office space," near the end, substituted "reasonable administrative support" for "record keeping, computer services, billings, mailing, office supplies, and office space provided on a continuing basis" at the beginning of the first sentence in the second paragraph, and inserted "reasonable" at the beginning of the third paragraph.

§ 163-278.20: Repealed by Session Laws 2006-195, s. 2, effective January 1, 2007, and applicable to all contributions made and accepted on and after that date.

Editor's Note. — Session Laws 2006-195, s. 9, provides, in part, that: "The repeal of G.S. 163-278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date."

§ 163-278.27. Criminal penalties; duty to report and prosecute.

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge. (1973, c. 1272, s. 1; 1979, c. 500, s. 10; c. 1073, ss. 15, 19; 1981, c. 837, s. 4; 1987, c. 565, s. 17; 1993, c. 539, s. 1118; 1994, Ex. Sess., c. 24, s. 14(c); 1999-453, s. 2(c); 2001-419, s. 2; 2006-161, s. 5.)

Effect of Amendments. — Session Laws 2006-161, s. 5, effective October 1, 2006, and applicable to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after October 1, 2006, inserted "163-278.16B," in the middle of the first sentence in subsection (a).

ARTICLE 22D.

The North Carolina Public Campaign Fund.

§ 163-278.63. North Carolina Public Campaign Fund established; sources of funding.

(a) Establishment of Fund. — The North Carolina Public Campaign Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering this Article, including production and distribution of the Voter Guide required by G.S. 163-278.69 and personnel and other costs incurred by the Board, including public education about the Fund, shall be paid from the Fund and not from the General Fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. — Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.

(2) Designations made to the Public Campaign Fund by individual taxpayers pursuant to G.S. 105-159.2.

(3) Repealed by Session Laws 2005-276, s. 23A.1(c), effective January 1, 2006.

(4) Public Campaign Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(5) Money ordered returned to the Public Campaign Fund in accordance with G.S. 163-278.70.

(6) Voluntary donations made directly to the Public Campaign Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(7) Money collected from the fifty-dollar ($50.00) surcharge on attorney membership fees in G.S. 84-34.

(c) Determination of Fund Amount. — By October 1, 2003, and every two years thereafter, the Board, in conjunction with the Advisory Council for the Public Campaign Financing Fund, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund for the next election. (2002-158, s. 1; 2005-276, s. 23A.1 (c), (d); 2006-192, s. 14.1.)

Effect of Amendments. — Session Laws 2006-192, s. 14.1, effective August 3, 2006, inserted "including public education about the Fund," in the last sentence of subsection (a).

§ 163-278.64A. Special participation provisions for candidates in vacancy elections.

(a) Participation Provisions Modified. — Candidates involved in elections described in G.S. 163-329 may participate in the Fund subject to the provisions of G.S. 163-278.64 as modified by this section. The Board shall adapt other provisions of this Article, including G.S. 163-278.67, to those elections.

(b) Qualifying. — The State Board of Elections shall designate a special qualifying period of no less than four weeks for these candidates, beginning at the close of the notice-of-candidacy filing period. To receive certification, a participating candidate shall raise at least 225 qualifying contributions, totaling at least 20 times the amount of the filing fee for the office, for a four-week qualifying period. If the State Board of Elections sets a longer qualifying period, then for each additional week that the qualifying period extends beyond four weeks, the minimum number of qualifying contributions required for certification shall increase by 25, and the minimum amount of the qualifying contributions shall increase by two times the filing fee. The minimum qualifying contributions shall not exceed the limit set by G.S. 163-278.64(b).

(c) Allocations. — Certified candidates shall receive one percent (1%) of the funding to which they would be eligible under G.S. 163-278.65 times the number of calendar days between the end of the special qualifying period and the day of the general election. That amount shall not exceed one hundred percent (100%) of the funding to which they would be eligible under G.S. 163-278.65. (2006-192, s. 10.)

Editor's Note. — Session Laws 2006-192, s. 19, made this section effective August 3, 2006.

§ 163-278.65. Distribution from the Fund.

(a) Timing of Fund Distribution. — The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. — By August 1, 2003, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. — No funds shall be distributed.

(2) Contested primaries. — No funds shall be distributed except as provided in G.S. 163-278.67.

(3) Uncontested general elections. — No funds shall be distributed.

(4) Contested general elections. — Funds shall be distributed to a certified candidate for a position on the Court of Appeals in an amount equal to 125 times the candidate's filing fee as set forth in G.S. 163-107. Funds shall be distributed to a certified candidate for a position on the Supreme Court in an amount equal to 175 times the candidate's filing fee as set forth in G.S. 163-107.

(c) Method of Fund Distribution. — The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding. (2002-158, s. 1; 2006-192, s. 11.)

Effect of Amendments. — Session Laws 2006-192, s. 11, effective August 3, 2006, substituted "funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding." for "funding." at the end of the last sentence of subsection (c).

§ 163-278.66. Reporting requirements.

(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. — Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds five thousand dollars ($5,000). After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.

(b) Reporting by Participating and Certified Candidates. — Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. — The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information. (2002-158, s. 1; 2003-278, s. 2; 2006-192, s. 12.)

Effect of Amendments. — Session Laws 2006-192, s. 12, effective August 3, 2006, in the second sentence of subsection (a), deleted "in excess of three thousand dollars ($3,000)" following "Any entity making independent expenditures", and substituted "five thousand dollars ($5,000)" for "fifty percent (50%) of the trigger for rescue funds."

§ 163-278.68. Enforcement and administration.

(a) Enforcement by the Board. — The Board, with the advice of the Advisory Council for the Public Campaign Fund, shall administer the provisions of this Article.

(b) Advisory Council for the Public Campaign Fund. — There is established under the Board the Advisory Council for the Public Campaign Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Public Campaign Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full terms, except that regardless of the time of appointment each term shall end on December 31. A member shall continue on the Advisory Council beyond the expired term until a successor is appointed. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term.

(c) Appeals. — The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(d) Board to Adopt Rules and Issue Opinions. — The Board shall adopt rules and issue opinions to ensure effective administration of this Article. Such rules and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of rescue money that further the purpose and avoid the subversion of G.S. 163-278.67. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(e) Report to the Public. — The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2005, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article and the feasibility of expanding its provisions to include other candidates for State office based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures." (2002-158, s. 1; 2005-276, s. 23A.1(d); 2006-192, s. 13.)

Effect of Amendments. —

Session Laws 2006-192, s. 13, effective August 3, 2006, in the last paragraph of subsection (b), added "except that regardless of the time of appointment each term shall end on December 31" at the end of the fifth sentence and added the sixth sentence.

§ 163-278.69. Voter education.

(a) Judicial Voter Guide. — The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 14 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. — The Judicial Voter Guide shall include information concerning all candidates for the Supreme Court and the Court of Appeals, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.

(4) Employer.
(5) Date admitted to the bar.
(6) Legal/judicial experience.
(7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, your ratings, why you are seeking judicial office, why you would make a good judge, what distinguishes you from your opponent(s), your acceptance of spending and fund-raising limits to qualify to receive funds from the Public Campaign Fund, and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

(c) Disclaimer. — The Judicial Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections." (2002-158, s. 1; 2005-276, s. 23A.1(d); 2005-430, s. 6; 2006-192, s. 14.)

Effect of Amendments. — Session Laws 2006-192, s. 14, effective August 3, 2006, substituted "Statements by candidates" for "The above statements" in subsection (c).

ARTICLE 22E.

Electioneering Communications.

§ 163-278.80. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "disclosure date" means either of the following:
   a. The first date during any calendar year when an electioneering communication is aired after an entity has incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000).
   b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.
(2) The term "electioneering communication" means any broadcast, cable, or satellite communication that has all the following characteristics:
   a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
   b. Is made within one of the following time periods:
      1. 60 days before a general or special election for the office sought by the candidate, or
      2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.
   c. Is targeted to the relevant electorate.
(3) The term "electioneering communication" does not include any of the following:
   a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting

station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

(4) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).

(5) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and 7,500 or more individuals in the district in the case of a candidacy for General Assembly.

(6) The term "501(c)(4) organization" means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(7) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2004-125, s. 1; 2006-182, s. 1(a).)

Editor's Note. —

Session Laws 2006-182, s. 4, is a severability clause.

Effect of Amendments. — Session Laws 2006-182, s. 1(a), effective August 1, 2006, except that any criminal penalty resulting from the act became effective October 1, 2006, substituted "incurred expenses" for "made disbursements" in the middle of subdivisions (1)(a) and (1)(b).

§ 163-278.81. Disclosure of Electioneering Communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or airing electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(a), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date. (2004-125, s. 1; 2005-430, s. 9(a); 2006-182, s. 2(a).)

Editor's Note. — Session Laws 2006-182, s. 4, is a severability clause.

Effect of Amendments. —

Session Laws 2006-182, s. 2(a), effective August 1, 2006, except that any criminal penalty resulting from this act becomes effective October 1, 2006, in the middle of subsection (a), substituted "incurs an expense" for "makes a disbursement" and substituted "or airing" for "and airing"; in subsection (b), substituted "incurring the expense" for "making the disbursement" throughout this subsection, in subdivision (b)(3), substituted "expense incurred" for "disbursement" and substituted "expense was incurred" for "disbursement was made" at the end, and, in subdivision (b)(5), in the first sentence, substituted "entities that provided funds or anything of value whatsoever in" for "contributors who contributed" and substituted "provided" for "contributed", and added the last two sentences.

§ 163-278.82. Prohibition of corporate and labor disbursements for electioneering communications.

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or airing any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. — Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced. (2004-125, s. 1; 2005-430, s. 9(b); 2006-182, s. 3(a).)

Editor's Note. — Session Laws 2006-182, s. 4, is a severability clause.

Effect of Amendments. —

Session Laws 2006-182, s. 3(a), effective August 1, 2006, except that any criminal penalty resulting from this act becomes effective October 1, 2006, rewrote subsection (a) which read: "Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. For the purpose of this section, the term 'electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account."

§ 163-278.83. Penalties.

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.82. (2004-125, s. 1; 2006-259, s. 29(a).)

Effect of Amendments. — Session Laws 2006-259, s. 29(a), effective August 23, 2006, in the second sentence, substituted "individual, committee, association, or any other organization or group of individuals" for "organization" near the beginning and deleted "from a political committee" following "compel" near the end; and inserted "and remedies" near the beginning of the last sentence.

Article 22F.

Mass Mailings and Telephone Banks: Electioneering Communications.

§ 163-278.90. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is made within one of the following time periods:

1. 60 days before a general or special an election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate.

(3) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

(4) The term "mass mailing" means any mailing by United States mail or facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).

(5a) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.

(6) The term "targeted to the relevant electorate" means:

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.

b. With respect to a race for the General Assembly:

1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or
2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) The term "501(c)(4) organization" means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(9) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2004-125, s. 2; 2006-182, s. 1(b).)

Editor's Note. —
Session Laws 2006-182, s. 4, is a severability clause.

Effect of Amendments. — Session Laws 2006-182, s. 1(b), effective August 1, 2006, except that any criminal penalty resulting from this act becomes effective October 1, 2006, substituted "incurred expenses" for "made disbursements" in subdivision (1)(a) and (1)(b); deleted "that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list" at the end of the first sentence of subdivision (4); added subdivision (5a); and rewrote subdivision (6).

§ 163-278.91. Disclosure of Electioneering Communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals who incurs an expense for the direct costs of producing or transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all entities that provided funds or anything of value whatsoever in an aggregate amount of more than

one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(c), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date. (2004-125, s. 2; 2005-430, s. 9(c); 2006-182, s. 2(b).)

Editor's Note. — Session Laws 2006-182, s. 4, is a severability clause.

Effect of Amendments. —

Session Laws 2006-182, s. 2(b), effective August 1, 2006, except that any criminal penalty resulting from this act becomes effective October 1, 2006, in the middle of subsection (a), substituted "incurs an expense" for "makes a disbursement" and substituted "or transmitting" for "and transmitting"; in subsection (b), substituted "incurring the expense" for "making the disbursement" throughout, in subdivision (b)(3), substituted "expense incurred" for "disbursement" and substituted "expense was incurred" for "disbursement was made", and, in subdivision (b)(5), in the first sentence, substituted "entities that provided funds or anything of value whatsoever in" for "contributors who contributed" and substituted "provided" for "contributed" and added the last two sentences.

§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering communications.

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or transmitting any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or transmitting any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. — Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced. (2004-125, s. 2; 2005-430, s. 9(d); 2006-182, s. 3(b).)

Editor's Note. — Session Laws 2006-182, s. 4, is a severability clause.

Effect of Amendments. —

Session Laws 2006-182, s. 3(b), effective August 1, 2006, except that any criminal penalty resulting from this act becomes effective October 1, 2006, rewrote subsection (a) which read: "Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. For the purpose of this section, the term 'electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account."

§ 163-278.93. Penalties.

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.92. (2004-125, s. 2; 2006-259, s. 29(b).)

Effect of Amendments. — Session Laws 2006-259, s. 29(b), effective August 23, 2006, in the second sentence, substituted "individual, committee, association, or any other organization or group of individuals" for "organization" and deleted "from a political committee" following "compel"; and inserted "and remedies" near the beginning of the last sentence.

§§ 163-278.94 through 163-278.99: Reserved for future codification purposes.

Article 22G.

Candidate-Specific Communications.

§ 163-278.100. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any broadcast, cable, or satellite communication that has all the following characteristics:
  a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
  b. Is made in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b.
  c. Is targeted to the relevant electorate.

(2) The term "candidate-specific communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

e. An electioneering communication as defined in Article 22E of this Chapter.

(3) The term "disclosure date" means either of the following:

a. The first date during any calendar year when a candidate-specific communication is aired after an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(4) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and 7,500 or more individuals in the district in the case of a candidacy for General Assembly.

(5) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2006-233, s. 1; 2006-259, s. 29(e).)

Editor's Note. — Session Laws 2006-233, s. 4 made this Article effective January 1, 2007.

Session Laws 2006-233, s. 3, is a severability clause.

Effect of Amendments. — Session Laws 2006-259, s. 29(e), effective August 23, 2006, substituted "and 7,500" for "and 2,500" near the end of subdivision (4).

§ 163-278.101. Disclosure of candidate-specific communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or airing candidate-specific communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that

entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The candidates in the candidate-specific communications that are identified or are to be identified.

(5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars ($1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(c) Creating Multiple Organizations. — It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article. (2006-233, s. 1.)

§ 163-278.102. Penalties.

The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article. (2006-233, s. 1; 2006-259, s. 29(c).)

Effect of Amendments. — Session Laws 2006-259, s. 29(c), effective August 23, 2006, in the first sentence, substituted "individual, committee, association, or any other organization or group of individuals" for "organization" near the middle and deleted "from a political committee" following "compel" near the end.

§§ 163-278.103 through 163-278.109: Reserved for future codification purposes.

ARTICLE 22H.

Mass Mailings and Telephone Banks: Candidate-Specific Communications.

§ 163-278.110. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is made in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.

c. Is targeted to the relevant electorate.

(2) The term "candidate-specific communication" does not include any of the following:
   a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.
   b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
   c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
   d. A communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.
   e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
   f. An electioneering communication as defined in Article 22F of this Chapter.
   g. A public opinion poll conducted by a newspaper, periodical, or other news gathering organization.

(3) The term "disclosure date" means either of the following:
   a. The first date during any calendar year when a candidate-specific communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000).
   b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(4) The term "mass mailing" means any mailing by United States mail or facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.

(6) The term "targeted to the relevant electorate" means:
   a. With respect to a statewide race:
      1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or
      2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.
   b. With respect to a race for the General Assembly:
      1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals. (2006-233, s. 2.)

Editor's Note. — Session Laws 2006-233, s. 4 made this Article effective January 1, 2007.

Session Laws 2006-233, s. 3, is a severability clause.

§ 163-278.111. Disclosure of candidate-specific communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or transmitting candidate-specific communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The candidates in the candidate-specific communications that are identified or are to be identified.

(5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars ($1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(c) Creating Multiple Organizations. — It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article. (2006-233, s. 2.)

§ 163-278.112. Penalties.

The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article. (2006-233, s. 2; 2006-259, s. 29(d).)

Effect of Amendments. — Session Laws 2006-259, s. 29(d), effective August 23, 2006, in the first sentence, substituted "individual, committee, association, or any other organization or group of individuals" for "organization" near the beginning and deleted "from a political committee" following "compel" near the end.

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

Article 23.

Municipal Election Procedure.

§ 163-279. Time of municipal primaries and elections.

(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in 1973 and every two or four years thereafter as provided by municipal charter on the following days:

(1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.

(2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, the first primary shall be held on the second Tuesday after Labor Day, and the second primary, if required, shall be held on the fourth Tuesday before the election.

(3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.

(4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November.

(b) Notwithstanding the provisions of subsection (a), the next regular municipal primary and election in Winston-Salem shall be held at the time of the primary and election for county officers in 1974, officers elected at that time shall serve terms of office expiring on the first Monday in December, 1977. Beginning in 1977, municipal primaries and elections in Winston-Salem shall be held at the time provided in this section.

(c) Officers of sanitary districts elected in 1970 shall hold office until the first Monday in December, 1973, notwithstanding G.S. 130-126. Beginning in 1973, sanitary district elections shall be held at the times provided in this section or in G.S. 130A-50(b1). (1971, c. 835, s. 1; 1973, c. 1115; 1987, c. 22, s. 2; 2006-192, s. 3.)

Effect of Amendments. — Session Laws 2006-192, s. 3, effective January 1, 2007, and applicable to all primaries and elections conducted on or after January 1, 2007, in subdivision (a)(2), substituted "second" for "sixth", substituted "after Labor Day," for "before the election,", and substituted "fourth" for "third".

Article 24.

Conduct of Municipal Elections.

§ 163-291. Partisan primaries and elections.

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms "county board of elections," "chairman of the county board of elections," "county officers," and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

(1) The dates of primary and election shall be as provided in G.S. 163-279.

(2) A candidate seeking party nomination for municipal or district office shall file notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

a. In 2001 a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

b. In 2002 if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

(3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(4) The municipal ballot may not be combined with any other ballot.

(5) The canvass of the primary and second primary shall be held on the seventh day following the primary or second primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Thursday following the canvass of the first primary. (1971, c. 835, s. 1; 1973, c. 870, s. 1; 1975, c. 370, s. 2; 1983, c. 330, s. 2; 1985, c. 599, ss. 2, 3; 1989 (Reg. Sess., 1990), c. 1012, s. 3; 1995 (Reg. Sess., 1996), c. 553, s. 2; 1999-227, s. 5; 2003-278, s. 10(e), (f); 2006-192, s. 4.)

Editor's Note. —

Session Laws 2006-192, s. 1(a) and (b), provides: "(a) The State Board of Elections shall select local jurisdictions in which to conduct a pilot program during the 2007 and 2008 elections for local offices using instant runoff voting. The State Board shall select:

"(1) Up to 10 cities for the 2007 elections.

"(2) Up to 10 counties for the 2008 elections.

"In selecting those local jurisdictions, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted only with the concurrence of the county board of elections that conducts elections for the local jurisdiction. If a city is selected that has voters in more than one county, the concurrence of all the county boards of elections that conduct that city's elections is required. The pilot program shall consist of using instant runoff voting as the method for determining the winner or winners of a partisan primary or a nonpartisan election that normally uses nonpartisan election and runoff or nonpartisan primary and election. Instant runoff voting may also be used to determine results in an election where nonpartisan plurality elections are normally used, but only if the governing board of the local jurisdiction concurs.

"As used in this section, 'instant runoff voting' means a system in which voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the most first-choice votes receives the threshold of victory of the first-choice votes, that candidate wins. If no candidate receives the threshold of victory of first-choice votes, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election.

"The threshold of victory of first-choice votes for a partisan primary shall be forty percent (40%) plus one vote. The threshold of victory for a nonpartisan election and runoff or nonpartisan primary and election shall be a majority of the vote. The threshold of victory in a contest that normally uses nonpartisan plurality shall be determined by the State Board with the concurrence of the county board of elections and the local governing board.

"If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first counting results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won.

"Other details of instant runoff voting are as described in House Bill 1024 (First Edition) of the 2005 Regular Session of the General Assembly, with modifications the State Board deems necessary, in primaries and/or elections for city offices, for county offices, or for both. Those modifications may include giving the voter more than three choices in case of multiseat contests. The State Board shall not use instant runoff voting in a primary or election for an office unless the entire electorate for the office uses the same method.

"(b) The State Board of Elections shall closely monitor the pilot program established in this section and report its findings and recommendations to the 2007 General Assembly."

Effect of Amendments. —

Session Laws 2006-192, s. 4, effective January 1, 2007, in subdivision (2), deleted "his" preceding "notice", substituted "third" for "first" and substituted "July" for "August".

§ 163-294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.

(a) Each person offering himself as a candidate for election to any municipal office in municipalities whose elections are nonpartisan shall do so by filing a notice of candidacy with the board of elections in the following form, inserting the words in parentheses when appropriate:

"Date ____________;

I hereby file notice that I am a candidate for election to the office of ____________ (at large) (for the ____________ Ward) in the regular municipal election to be held in ________________ on ________, ______
(municipality)

Signed ______________________________
(Name of Candidate)

Witness: ____

FOR THE BOARD OF ELECTIONS"

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the board of elections or the director of elections of that county, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the board of elections. The candidate shall sign the notice of candidacy with his legal name and, in his discretion, any nickname by which he is commonly known, in the form that he wishes it to appear upon the ballot but substantially as follows: "Richard D. (Dick) Roc." A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit, and notwithstanding the previous sentence, if the candidate has used his nickname in lieu of first and middle names as permitted by this sentence, unless another candidate for the same office who files a notice of candidacy has the same last name, the nickname shall be printed on the ballot immediately before the candidate's surname but shall not be enclosed by parentheses. If another candidate for the same office who filed a notice of candidacy has the same last name, then the candidate's name shall be printed on the ballot in accordance with the next sentence of this subsection. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

(b) Only persons who are registered to vote in the municipality shall be permitted to file notice of candidacy for election to municipal office. The board of elections shall inspect the voter registration lists immediately upon receipt of the notice of candidacy and shall cancel the notice of candidacy of any candidate who is not eligible to vote in the election. The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the county sheriff.

(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

(1) In 2001 candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

(2) In 2002 if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

Notices of candidacy which are mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails.

(d) Any person may withdraw his notice of candidacy at any time prior to the filing deadline prescribed in subsection (c), and shall be entitled to a refund of his filing fee if he does so.

(e) The filing fee for the primary or election shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(f) No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for the election unless the notice of candidacy for the first office is withdrawn first. (1971, c. 835, s. 1; 1973, c. 870, s. 2; 1975, c. 370, s. 2; 1977, c. 265, s. 18; 1981, c. 32, s. 3; 1983, c. 330, s. 3; c. 644, ss. 1, 2; 1985, c. 472, s. 5; c. 558, s. 3; c. 599, s. 1; 1989 (Reg. Sess., 1990), c. 1012, s. 4; 1995, c. 243, s. 1; 1999-227, s. 6; 1999-456, s. 59; 2006-192, s. 5.)

Effect of Amendments. — Session Laws 2006-192, s. 5, effective January 1, 2007, and applicable to all primaries and elections conducted on or after January 1, 2007, in the introductory language of subsection (c), substituted "third" for "first" and "July" for "August".

§ 163-295. Municipal and special district elections; application of Chapter 163.

To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 11B, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles. (1971, c. 835, s. 1; 1973, c. 793, s. 91; 1993 (Reg. Sess., 1994), c. 762, s. 68; 2006-155, s. 5.)

Editor's Note. — Session Laws 2006-155, s. 7, is a severability clause.

Effect of Amendments. — Session Laws 2006-155, s. 5, effective January 1, 2007, and applicable to actions filed on or after January 1, 2007, inserted "11B" in the middle of the first sentence.

§ 163-296. Nomination by petition.

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least four percent (4%) of the whole number of voters qualified to vote in the municipal election according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general municipal election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by four percent (4%) of the voters qualified to vote for that office. (1971, c. 835, s. 1; 1979, c. 23, ss. 2, 4, 5; c. 534, ss. 3, 4; 1989, c. 402; 1991, c. 297, s. 2; 2004-127, s. 8(b); 2006-264, s. 21.)

Effect of Amendments. — Session Laws 2006-264, s. 21, effective August 27, 2006, near the end of the first sentence, inserted "Elections" and "municipal".

§ 163-327: Repealed by Session Laws 2006-192, s. 9(a), effective August 3, 2006, and applicable to vacancies occurring on or after August 3, 2006.

§ 163-327.1. Rules when vacancies for superior court judge are to be voted on.

If a vacancy occurs in a judicial district for any offices of superior court judge, and on account of the occurrence of such vacancy, there is to be an election for one or more terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9 and Article IV, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

(1) If the vacancy occurs prior to the opening of the filing period under G.S. 163-323(b), nominations shall be made by primary election as provided by this Article, without designation as to the vacancy.

(2) If the vacancy occurs beginning on opening of the filing period under G.S. 163-323(b), and ending on the sixtieth day before the general election, candidate filing shall be as provided by G.S. 163-329 without designation as to the vacancy.

(3) The general election ballot shall contain, without designation as to vacancy, spaces for the election to fill the vacancy where nominations were made or candidates filed under subdivision (1) or (2) of this section. Except as provided in G.S. 163-329, the persons receiving the highest numbers of votes equal to the term or terms to be filled shall be elected to the term or terms. (2001-460, s. 10; 2006-192, s. 8(b).)

Effect of Amendments. — Session Laws 2006-192, s. 8(b), effective August 3, 2006, and applicable to vacancies occurring on or after that date, substituted "Except as provided in G.S. 163-329, the" for "The" at the beginning of the second sentence of subdivision (b)(3).

§ 163-328. Failure of candidates to file; death or other disqualification of a candidate; no withdrawal from candidacy.

(a) Insufficient Number of Candidates. — If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(a1) Death or Disqualification of Candidate Before Primary. — If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Earlier Non-Primary Vacancies; Reopening Filing. — If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, or if a primary has occurred and eliminated candidates, and thereafter a remaining candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and that election shall be conducted as provided in G.S. 163-329(b1).

(c) Later Vacancies; Ballots Not Reprinted. — If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death or other disqualification, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

(d) No Withdrawal Permitted of Living, Qualified Candidate After Close of Filing. — After the close of the candidate filing period, a candidate who has filed a notice of candidacy for the office, who has not withdrawn notice before the close of filing as permitted by G.S. 163-323(b), who remains alive, and has not become disqualified for the office may not withdraw his or her candidacy. That candidate's name shall remain on the ballot, any votes cast for the candidacy shall be counted in primary or election, and if the candidate wins, the candidate may fail to qualify by refusing to take the oath of office.

(e) Death, Disqualification, or Failure to Qualify After Election. — If a person elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies or becomes disqualified on or after election day and before he has qualified by taking the oath of office, or fails to qualify by refusing to take the oath of office, the office shall be deemed vacant and shall be filled as provided by law. (1996, 2nd Ex. Sess., c. 9, s. 7; 1999-424, s. 4(b); 2006-192, s. 9(b).)

Effect of Amendments. — Session Laws 2006-192, s. 9(b), effective August 3, 2006, and applicable to vacancies occurring on or after that date, substituted "candidate; no withdrawal from candidacy." for "candidate before election." in the section heading; added subdivision (a1); in subsection (b), substituted "Earlier Non-Primary Vacancies;" for "Death or Other Disqualification of Candidate;" in the subsection heading, inserted "or if a primary has occured and eliminated candidates," and "remaining" in the middle of the first sentence and, in the last sentence, substituted "that" for "such", and substituted "as provided in G.S. 163-329(b1)." for "on the plurality basis."; in subsection (c), substituted "Later Vacancies;" for "Vacancy Caused by Nominated Candidate;" in the subsection heading, substituted "death or" for "death,", and deleted "or resignation," following "other disqualification,"; and added subsections (d) and (e).

§ 163-329. Elections to fill vacancy in office created after primary filing period opens.

(a) General. — If a vacancy is created in the office of justice of the Supreme

Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the method provided in subsection (b1) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Repealed by Session Laws 2006-192, s. 8(a), effective August 3, 2006, and applicable to vacancies occurring on or after that date.

(b1) Method for Vacancy Election. — If a vacancy for the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then the Board shall conduct the election for the office as follows:

(1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election held on the same day as the general election for members of the General Assembly.

(2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the "instant runoff voting" method shall be used to determine the winner. Under "instant runoff voting," voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the greatest number of first-choice votes receives more than fifty percent (50%) of the first-choice votes, that candidate wins. If no candidate receives that minimum number, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election. If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first count results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won. In multi-seat contests, the State Board of Elections may give the voter more than three choices.

(3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.

(c) Applicable Provisions. — Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

(d) Rules. — The State Board of Elections shall adopt rules for the implementation of this section. The rules are not subject to Article 2A of Chapter 150B of the General Statutes. The rules shall include the following:

(1) If after the first-choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.

(2) The fact that the voter does not designate a second or third choice does not invalidate the voter's higher choice or choices.

(3) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.

(4) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 12.1; 2002-158, s. 7; 2006-192, s. 8(a).)

Effect of Amendments. —

Session Laws 2006-192, s. 8(a), effective August 3, 2006, and applicable to vacancies occurring on or after that date, in the section heading, inserted "in office", and substituted "period opens." for "period to use plurality method."; in subsection (a), near the end, deleted "plurality" preceding "method", deleted "as" preceding "provided", and substituted "(b1)" for "(b)"; deleted subsection (b); added subsections (b1), (c), and (d).

Chapter 166A.

North Carolina Emergency Management Act.

Article 1.

North Carolina Emergency Management Act of 1977.

Sec.
166A-4. Definitions.
Sec.
166A-6.01. State disaster assistance funds; programs.
166A-6.02. State Emergency Response Account.
166A-14. Immunity and exemption.

Article 1.

North Carolina Emergency Management Act of 1977.

§ 166A-4. Definitions.

The following definitions apply in this Article:

(1) Account. — The State Emergency Response Account established in G.S. 166A-6.02.

(1a) Disaster. — An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.

(2) Disaster Area. — The geographical area covered by a proclamation made by the Governor pursuant to G.S. 166A-6(a1).

(3) Eligible Entity. — Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Article.

(4) Emergency Management. — Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which includes the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(5) Emergency Management Agency. — A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(6) Political Subdivision. — Counties and incorporated cities, towns and villages.

(7) Preliminary Damage Assessment. — The (initial estimate prepared) process used by State, local, or federal emergency management workers to determine the severity and magnitude of damage caused by a disaster event.

(8) Private Nonprofit Utilities. — A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(9) Stafford Act. — The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, 88 Stat. 143, codified generally at 42 U.S.C. § 5121, et seq., as amended.

(10) State Acquisition and Relocation Fund. — State funding for supplemental grants to homeowners participating in a Hazard Mitigation Grant Program Acquisition and Relocation Program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the Hazard Mitigation Grant Program Acquisition and Relocation Program and the cost of a comparable home located outside the 100-year floodplain.

(1951, c. 1016, s. 2; 1953, c. 1099, s. 1; 1955, c. 387, s. 1; 1975, c. 734, ss. 4-6, 14; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, s. 123; 2001-214, s. 1; 2006-66, ss. 6.5(c), (d).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6, is a severability clause.

Effect of Amendments. — Session Laws 2006-66, ss. 6.5(c) and (d), effective July 1, 2006, added subdivision (1) and redesignated former subdivision (1) as present subdivision (1a).

§ 166A-6.01. State disaster assistance funds; programs.

(a) If a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance as authorized by this section. Any State funds made available by the Governor for disaster assistance may be administered through State disaster assistance programs which may be established by the Governor upon the proclamation of a state of disaster. It is the intent of the General Assembly in authorizing the Governor to make State funds available for disaster assistance and in authorizing the Governor to establish State disaster assistance programs to provide State assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

(b) Disaster Assistance Programs — Type I Disaster. — In the event that a Type I disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of individual assistance and public assistance as provided in this subsection.

(1) Individual assistance. — State disaster assistance in the form of grants to individuals and families may be made available when damage meets or exceeds the criteria set out in 13 C.F.R. Part 123 for the Small Business Administration Disaster Loan Program. Individual assistance grants shall include benefits comparable to those provided by the Stafford Act and may be provided for the following:
  a. Provision of temporary housing and rental assistance.
  b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to locate the individual or family in safe, decent, and sanitary housing.
  c. Replacement of personal property (including clothing, tools, and equipment).
  d. Repair or replacement of privately owned vehicles.
  e. Medical or dental expenses.
  f. Funeral or burial expenses resulting from the disaster.
  g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public assistance. — State disaster assistance in the form of public assistance grants may be made available to eligible entities located within the disaster area on the following terms and conditions:
  a. Eligible entities shall meet the following qualifications:
    1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;
    2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding one percent (1%) of the annual operating budget;
    3. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after the deadline established by the Federal Emergency

Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and

4. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:
1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(c) If a Type II disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(d) If a Type III disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(3) Any programs authorized by the General Assembly. (2001-214, s. 4; 2001-487, s. 98; 2002-24, s. 1; 2002-159, s. 57.5; 2006-66, s. 6.5(a).)

Editor's Note. —

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6, is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 6.5(a), effective July 1, 2006, substituted "one percent (1%)" for "one-half percent (0.5%)" in subdivision (b)(2)a.2.

§ 166A-6.02. State Emergency Response Account.

(a) Account Established. — There is established a State Emergency Response Account as a reserve in the General Fund. Any funds appropriated to the Account shall remain available for expenditure as provided by this section, unless directed otherwise by the General Assembly.

(b) Purpose of Funds. — The Governor may spend funds from the Account for the following purposes:

(1) To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster as defined by G.S. 166A-6.

(2) To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.

All other types of disaster assistance authorized by G.S. 166A-6 shall continue to be financed by the funds made available under G.S. 166A-6.01.

(c) Reporting Requirement. — The Governor shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and House of Representatives on any expenditures from the State Emergency Response Account no later than 30 days after making the expenditure. The report shall include a description of the emergency and type of action taken. (2006-66, s. 6.5(b).)

Editor's Note. — Session Laws 2006-66, s. 28.7 made this section effective July 1, 2006.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6, is a severability clause.

§ 166A-14. Immunity and exemption.

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges the person would ordinarily possess if performing duties in the State, or political subdivision thereof in which normally employed or rendering services. (1957, c. 950, s. 4; 1975, c. 734, s. 14; 1977, c. 848, s. 2; 1979, c. 714, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, ss. 130, 131; 2002-179, s. 20(b); 2006-81, s. 1.)

Effect of Amendments. — Session Laws 2006-81, s. 1, effective July 10, 2006, substituted “the person” for “he” in subsections (b) and (e); substituted “the worker’s” for “his” in subsection (c); and substituted “any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any” for “a” at the end of subsection (d); and made minor stylistic changes.

Chapter 168A.

Persons with Disabilities Protection Act.

§ 168A-12. Statute of limitations.

CASE NOTES

Cited in Badgett v. Fed. Express Corp., 378 F. Supp. 2d 613, 2005 U.S. Dist. LEXIS 19307 (M.D.N.C. Apr. 7, 2005).

Constitution of North Carolina

ARTICLE I

DECLARATION OF RIGHTS

Section 1. The equality and rights of persons.

CASE NOTES

IV. Judicial Process.

IV. JUDICIAL PROCESS.

Batson Jury Challenges. — Because defendant failed to present a prima facie case of discrimination, a trial court's rulings denying defendant's objections to the State's use of peremptory challenges to remove African-American jurors from the jury panel solely, as defendant contended, because of their race, was upheld on appeal since the trial court had made specific findings of fact and found no proven purposeful discrimination and the State offered race-neutral explanations for each peremptory challenge. State v. Carmon, 169 N.C. App. 750, 611 S.E.2d 211, 2005 N.C. App. LEXIS 794 (2005).

Sec. 6. Separation of powers.

CASE NOTES

I. In General.

I. IN GENERAL.

Habitual Offender Act Not Violative of Separation of Powers Clause. — Defendant's constitutional challenges to his sentence as an habitual felon failed because (1) the North Carolina Habitual Felon Act was not violative of the Separation of Powers Clause; (2) there was no double jeopardy infirmity inherent in the Habitual Felon Act as applied in conjunction with the North Carolina Structured Sentencing Act; and (3) the state appellate court and the state supreme court have rejected constitutional challenges to the Habitual Felon Act based on allegations of cruel and unusual punishment. State v. McIlwaine, 169 N.C. App. 397, 610 S.E.2d 399, 2005 N.C. App. LEXIS 607 (2005).

Road Closure Appeal Procedure not Unconstitutional. — G.S. 160A-299(b) did not deprive a home owner of his right to a fair hearing or violate the Separation of Powers Clause of the North Carolina Constitution in his appeal from a town council order closing a road because he had the opportunity to test, rebut, and explain evidence presented to the council at three public hearings held on the road closure over a two-month period; these hearings were the proper place for him to present evidence and to rebut any evidence contrary to his position. Houston v. Town of Chapel Hill, — N.C. App. —, 630 S.E.2d 249, 2006 N.C. App. LEXIS 1199 (2006).

Sec. 14. Freedom of speech and press.

CASE NOTES

III. Restrictions on Exercise of Rights.

III. RESTRICTIONS ON EXERCISE OF RIGHTS.

Employee's Right to Free Speech. — Former at-will employee's claims that alleged that the employee was fired for opposing the employer's unlawful activities, insisting on proper reporting, and demanding the payment of past wages due to employees were dismissed because North Carolina rejected free speech abridgment claims against private sector employers under the North Carolina constitution, which did not recognize a remedy for private sector employees against their employers. Hardin v. Belmont Textile Mach., Co., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 54452 (W.D.N.C. Aug. 3, 2006).

Sec. 16. Ex post facto laws.

CASE NOTES

Tax Not Retrospective. —

Midyear tax rate increase implemented by 2001 N.C. Sess. Laws 424, as codified in G.S. 105-134.2(a), was not levied until the conclusion of the taxable year; thus, the tax operated prospectively from the date of enactment and did not violate N.C. Const. art. I, § 16. Coley v. State, 360 N.C. 493, 631 S.E.2d 121, 2006 N.C. LEXIS 594 (2006).

Retrospective Increase on an Income Tax Rate Consitutional. — Plain language of N.C. Const. art. I, § 16 did not indicate in any way that the prohibition on retrospective taxes included a prohibition on a retrospective increase on an income tax rate; because the increase in the income tax rate under 2001 N.C. Sess. Laws 424 was not a tax upon an act, the statute was constitutional. Coley v. State, 173 N.C. App. 481, 620 S.E.2d 25, 2005 N.C. App. LEXIS 2104 (2005).

Amendments to Statutes Criminalizing Possession of Guns by Ex-Felons. — Application of G.S. 14-415.1 to convict defendant, who was convicted of a felony in 1983 and had fully served his sentence on that conviction when he was found in possession of a handgun in 2001, did not violate ex post facto where the statute was amended in 1995 and applied to all occurrences after that date; ex post facto was also not violated since defendant's 1983 conviction, which was the predicate felony for his conviction under G.S. 14-415.1, was a felony in 1983, was a felony in 1995 when the statute was amended, and was a felony in 2001 when defendant was found in possession of a handgun; finally, the amendment to G.S. 14-415.1 in 1995 did not increase the punishment for defendant's prior 1983 felony, but created a new offense, so ex post facto was also not violated on that ground. State v. Johnson, 169 N.C. App. 301, 610 S.E.2d 739, 2005 N.C. App. LEXIS 612 (2005).

Amendments to Statutes Criminalizing Possession of Guns by Ex-Felons Are Not Bills of Attainder. — Application of G.S. 14-415.1 to convict defendant, who was convicted of a felony in 1983 and had fully served his sentence on that conviction when he was found in possession of a handgun in 2001, did not violate prohibitions against bills of attainder, or against bills of pain and penalties, since the statute's prohibition of possession of handguns by convicted felons outside their homes or businesses was not enacted as a retroactive punishment, was not historically regarded as punishment, and was not imposed without judicial process; defendant had a trial before being convicted under the statute; defendant was not punished for belonging to a designated class of people, but was convicted for violating a statute that was validly imposed on the group to which he belonged, so there was no violation of the bill of attainder provisions in U.S. Const. art. I, § 10 and N.C. Const. art. I, § 16. State v. Johnson, 169 N.C. App. 301, 610 S.E.2d 739, 2005 N.C. App. LEXIS 612 (2005).

Sec. 18. Courts shall be open.

CASE NOTES

I. General Consideration.
V. Speedy Criminal Trials.

I. GENERAL CONSIDERATION.

Cited in Houston v. Town of Chapel Hill, — N.C. App. —, 630 S.E.2d 249, 2006 N.C. App. LEXIS 1199 (2006).

V. SPEEDY CRIMINAL TRIALS.

Defendant was not deprived of his constitutional right to a speedy trial, etc.

Trial court properly denied defendant's motion to dismiss for denial of a speedy trial, pursuant to his rights under U.S. Const., Amend. VI and N.C. Const. art. I, § 18, as the 20-month delay was presumptively prejudicial and defendant had asserted his right to a speedy trial, but the reason was attributable to the trial court's case load, which was not due to neglect or willfulness by the State, and to the multiple continuances granted to defendant, and he failed to show that he was prejudiced thereby. State v. Dorton, 172 N.C. App. 759, 617 S.E.2d 97, 2005 N.C. App. LEXIS 1794 (2005), cert. denied, 360 N.C. 69, 623 S.E.2d 775 (2005).

Sec. 19. Law of the land; equal protection of the laws.

CASE NOTES

I. General Consideration.
II. Due Process and the "Law of the Land".
III. Equal Protection.
IV. Rights of Defendants.
  C. Double Jeopardy.
  D. Right to Counsel.
  G. Identification of Defendant.
VII. Taking of Private Property for Public Use.
  E. Illustrative Cases.
IX. Miscellaneous Rights.
XI. Illustrative Cases.
  A. Statutes, Proceedings, etc., Upheld.
  B. Statutes, Proceedings, etc., Held Unconstitutional.

I. GENERAL CONSIDERATION.

Due Process Rights Satisfied By Case Hearing Before the North Carolina Office of Administrative Hearings. — Where a demoted state employee failed to show that there were actually any similarly situated persons who were treated differently and he did not argue that any difference in discipline was based on a protected characteristic or was without rational basis, his due process and equal protection arguments failed; the employee's due process rights were satisfied by the opportunity to pursue a contested case hearing before the North Carolina Office of Administrative Hearings. Hilliard v. N.C. Dep't of Corr., 173 N.C. App. 594, 620 S.E.2d 14, 2005 N.C. App. LEXIS 2121 (2005).

Doctrine of Collateral Estoppel Not Applicable. — Doctrine of collateral estoppel did not preclude an aggressor instruction where no unanimous verdict was reached by the jury on the issue of whether defendant was or was not the agressor in defendant's first trial. State v. Herndon, — N.C. App. —, 629 S.E.2d 170, 2006 N.C. App. LEXIS 961 (2006).

Cited in Goldston v. State, 173 N.C. App. 416, 618 S.E.2d 785, 2005 N.C. App. LEXIS 2012 (2005); State v. Bethea, 173 N.C. App. 43, 617 S.E.2d 687, 2005 N.C. App. LEXIS 1907 (2005); Houston v. Town of Chapel Hill, — N.C. App. —, 630 S.E.2d 249, 2006 N.C. App. LEXIS 1199 (2006).

II. DUE PROCESS AND THE "LAW OF THE LAND".

And Requires Notice and Opportunity to Be Heard. —

Mother's motion regarding custody and child support asked the trial court to enter an order modifying and increasing child support and to instruct the father to pay the ordered support each month without deductions; this notice clearly apprised the father that the hearing would include child support issues, including arrearages, and satisfied due process. Swanson v. Herschel, — N.C. App. —, 622 S.E.2d 159, 2005 N.C. App. LEXIS 2615 (2005).

No Property Right in At-Will Employment. —

To the extent that plaintiff sought to challenge his discharge from state employment under the law of the land clause of the North Carolina constitution, that claim required a property interest, and because plaintiff lacked a property interest in his employment under state law (plaintiff was an employee at will), such a claim failed. Whitesell v. Town of Morrisville, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 61074 (E.D.N.C. July 14, 2006).

Right of Litigant to An Adequate and Fair Hearing. —

G.S. 160A-299(b) did not deprive a home owner of his right to a fair hearing or violate the Separation of Powers Clause of the North Carolina Constitution in his appeal from a town council order closing a road because he had the opportunity to test, rebut, and explain evidence presented to the council at three public hearings held on the road closure over a two-month period; these hearings were the proper place for him to present evidence and to rebut any evidence contrary to his position. Houston v. Town of Chapel Hill, — N.C. App. —, 630 S.E.2d 249, 2006 N.C. App. LEXIS 1199 (2006).

And to Notice and Opportunity to Be Heard. —

North Carolina Industrial Commission's decision that a workers' compensation claimant had sustained a change in condition was reversed as an employer did not have notice that the Commission would address a change in condition or the claimant's inability to comply with a mandated work schedule as the Commission had concluded that evidence that the claimant's condition had worsened was not relevant. Branch v. Carolina Shoe Co., 172 N.C. App. 511, 616 S.E.2d 378, 2005 N.C. App. LEXIS 1802 (2005).

Defendant Denied Right to Fair and Nonprejudicial Trial by Trial Judge's Conduct. — Because the cumulative nature of the trial judge's remarks to defense counsel regarding his speech pattern, along with a fine imposed for counsel's use of the word "okay," set a tone of fear in the trial and tainted the atmosphere of the same, prejudicing defendant's rights, defendant was entitled to a new trial. State v. Wright, 172 N.C. App. 464, 616 S.E.2d 366, 2005 N.C. App. LEXIS 1797 (2005).

Due Process Denied When Decision of Whether Probation Should be Revoked is Delegated to Victim. — Trial court's judgment revoking defendant's probation imposed upon his conviction for obtaining property by false pretenses violated the minimum requirements of due process because the trial court improperly abdicated its discretionary authority to determine whether probation should be revoked and, instead, delegated to the victim the authority of determining whether revocation was proper by stating that it would continue defendant on probation only if the victim agreed to that course of action. State v. Arnold, 169 N.C. App. 438, 610 S.E.2d 396, 2005 N.C. App. LEXIS 672 (2005).

No Denial of Procedural Due Process. — Due process rights of a student were not violated by a 15-day suspension where the record showed that the student was given notice of the charges, an opportunity to be heard, and an opportunity to examine and cross-examine witnesses. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

III. EQUAL PROTECTION.

Illustrative Cases. — Even though a student failed to preserve an equal protection challenge to a suspension by failing to assign error or present authority, the argument was meritless at any rate under arbitrary and capricious review because there was a gender-neutral reason for a longer suspension; prior incidents of "shanking" at a high school did not result in the exposure of buttocks or genitalia. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Where a contractor had nine open burning piles within 1,000 feet from a dwelling, the North Carolina Department of Environment and Natural Resources did not violate the contractor's equal protection rights by imposing a penalty for each of the nine piles, because the imposition of multiple fines for multiple open burning piles was rationally related to a legitimate government purpose. MW Clearing & Grading, Inc. v. N.C. Dep't of Env't & Natural Res., 171 N.C. App. 170, 614 S.E.2d 568, 2005 N.C. App. LEXIS 1210 (2005), cert. denied, 360 N.C. 65, 623 S.E.2d 585 (2005).

Trial court properly dismissed appeal by hospital joint venture and a town from denial of a certificate of need to construct a new hospital under the exemption provisions of G.S. 131E-184(a); the equal protection claim under N.C. Const. art. I, § 19 and U.S. Const. amend. XIV was properly dismissed as it failed to state a claim upon which relief could be granted in that it failed to allege the lack of a rational basis. Good Hope Hosp., Inc. v. N.C. HHS, 174 N.C. App. 266, 620 S.E.2d 873, 2005 N.C. App. LEXIS 2399 (2005).

IV. RIGHTS OF DEFENDANTS.

C. Double Jeopardy.

Double Jeopardy Shown. — Additional convictions for possession of the automobile and the credit cards were vacated because they violated double jeopardy. State v. Scanlon, — N.C. App. —, 626 S.E.2d 770, 2006 N.C. App. LEXIS 541 (2006).

Evidence Must Be Identical. — Defendant's convictions for malicious conduct by a prisoner and habitual misdemeanor assault did not charge the same offense, and did not violate the double jeopardy clause; although the conduct alleged in both indictments was identical, the evidence needed to prove both malicious conduct by a prisoner and habitual misdemeanor assault based on an assault of a government employee was different, which meant separate offenses were involved. State v. Artis, — N.C. App. —, 622 S.E.2d 204, 2005 N.C. App. LEXIS 2610 (2005).

Double Jeopardy Not Shown in Capital Case. — Imposition of death penalty in the defendant's second trial did not violate double jeopardy or Ring because the jury in the first trial had found at least one statutory aggravator and the jury in the second trial had also found at least one statutory aggravator. State v. Duke, 360 N.C. 110, 623 S.E.2d 11, 2005 N.C. LEXIS 1314 (2005).

Double Jeopardy Not Shown. — There was no risk of a lack of unanimity where defendant was charged with and convicted of the same number of offenses, and the evidence supported that number of offenses; using the same underlying act to support convictions for both first-degree sexual offense and indecent liberties did not violate defendant's constitutional protection against double jeopardy. State v. Brewer, 171 N.C. App. 686, 615 S.E.2d 360, 2005 N.C. App. LEXIS 1363 (2005).

Defendant's constitutional challenges to his sentence as an habitual felon failed because (1) the North Carolina Habitual Felon Act was not violative of the Separation of Powers Clause; (2) there was no double jeopardy infirmity inherent in the Habitual Felon Act as applied in conjunction with the North Carolina Structured Sentencing Act; and (3) the state appellate court and the state supreme court have rejected constitutional challenges to the Habitual Felon Act based on allegations of cruel and unusual punishment. State v. McIlwaine, 169 N.C. App. 397, 610 S.E.2d 399, 2005 N.C. App. LEXIS 607 (2005).

Mere fact that the state asked defendant to stipulate to a prior felony that did not correspond to the prior felony stated in the indictment did not render the error a substantive evidentiary one attributable to the state; instead, the record revealed an intention by defense counsel, after conferring with defendant, to stipulate to a prior felony and an assumption by the state that the stipulation relieved it of the burden of establishing that element of the possession of a firearm by a felon charge. State v. Mason, 174 N.C. App. 206, 620 S.E.2d 285, 2005 N.C. App. LEXIS 2292 (2005).

Indictments posed no danger to defendant's rights under the double jeopardy clause because, while he was tried for acts of sexual assault that occurred in one county, he was not tried for any acts he may have committed in another county. State v. Bullock, — N.C. App. —, 631 S.E.2d 868, 2006 N.C. App. LEXIS 1572 (2006).

Double Jeopardy Shown in Robbery and Kidnapping Convictions. — Since the State failed to show that the removal of the victims was separate from the robbery, that it increased the danger beyond that inherent in the robbery, that the victims were physically injured, or that they were subjected to restraint beyond that of the threatened use of a firearm, defendant's kidnapping convictions were reversed as being in violation of double jeopardy. State v. Ripley, 172 N.C. App. 453, 617 S.E.2d 106, 2005 N.C. App. LEXIS 1801 (2005), aff'd, — N.C. —, 626 S.E.2d 289 (2006).

Arrest of Judgment Required. —

It was reversible error to impose sentences for a first-degree kidnapping and attempted robbery with a dangerous weapon offenses, both of which the jury was instructed could serve as underlying felonies to the charge of felony murder. State v. Oglesby, — N.C. App. —, 622 S.E.2d 152, 2005 N.C. App. LEXIS 2624 (2005).

Felonious Assault and Misdemeanor Assault Sentences Constituted Double Jeopardy. — Trial court violated defendant's right to be free of double jeopardy when it sentenced him for both assault with a deadly weapon inflicting serious injury under G.S. 14-32(b) and misdemeanor assault inflicting serious injury under G.S. 14-33(c)(1) based on an incident in which defendant punched his girlfriend into a wall and stabbed her multiple times in the arm and leg; because defendant's convictions under G.S. 14-32(b) provided for greater punishment than G.S. 14-32.4 or 14-33(c), the trial court could not convict and sentence defendant under two statutes for the same conduct in each incident without violating the double jeopardy provisions of U.S. Const. Amend. 5 and N.C. Const. art. I, § 19. State v. McCoy, 174 N.C. App. 105, 620 S.E.2d 863, 2005 N.C. App. LEXIS 2289 (2005).

D. Right to Counsel.

Right to Counsel Includes Reasonable Time for Preparation. —

Trial court did not err in denying defendant's motion for a continuance where the state, in defendant's attempted first-degree murder and assault with a deadly weapon case, presented defendant with a statement on the morning of trial that it had obtained from the man who had allegedly sold defendant the gun used in the shootings involved in defendant's case; defendant had not shown evidence that he would have been better prepared had the motion to continue been granted or that he was materially prejudiced by the denial of his motion, and defendant was given a recess by the trial court to allow his counsel to interview the man. State v. Bethea, 173 N.C. App. 43, 617 S.E.2d 687, 2005 N.C. App. LEXIS 1907 (2005).

Illustrative Cases. —

As defendant's denial of his pointing of any gun was inconsistent with the defenses of necessity or justification, defendant's attorney made a tactical decision to present a theory of defense based upon defendant's own statements to police; as such, defense counsel's decision not to request jury instructions on necessity and justification with respect to a charge of assault by pointing a gun could not be ineffective assistance of counsel. State v. Langley, 173 N.C. App. 194, 618 S.E.2d 253, 2005 N.C. App. LEXIS 1920 (2005).

Defendant failed to show that there was a reasonable probability that, absent out-of-court statements that his counsel failed to obejct to, the trial result would have been different. Accordingly, his assignment of error based on ineffective assistance of counsel was without merit. State v. Thorne, 173 N.C. App. 393, 618 S.E.2d 790, 2005 N.C. App. LEXIS 2031 (2005).

As defendant's denial of his pointing of any gun was inconsistent with the defenses of necessity or justification, defendant's attorney made a tactical decision to present a theory of defense based upon defendant's own statements to police; as such, defense counsel's decision not to request jury instructions on necessity and justification with respect to a charge of assault by pointing a gun could not be ineffective assistance of counsel. State v. Langley, 173 N.C. App. 194, 618 S.E.2d 253, 2005 N.C. App. LEXIS 1920 (2005).

G. Identification of Defendant.

Requirements of Photographic Lineup. — Due process does not require that all subjects in a photographic lineup be identical in appearance, nor is such a lineup impermissibly suggestive merely because the defendant has a distinctive appearance. State v. Tutt, 171 N.C. App. 518, 615 S.E.2d 688, 2005 N.C. App. LEXIS 1313 (2005).

In-Court Identification Upheld. —

Prior to seeing defendant's photograph, a witness: (1) gave an accurate physical description of defendant as a short, white, heavyset male; (2) correctly identified defendant's first name; (3) gave an accurate description of defendant's residence, which was corroborated by defendant's mother; and (4) told police she knew of defendant and had seen him at the same convenience store in possession of guns one week prior to the shooting; the witness was able to view the criminal before and at the time of the crime and testified she saw defendant lower the gun after the victim was shot and drive away from the scene. A lieutenant showed the witness the picture of defendant on the night of the shooting, while she was at the hospital with the victim, and the time between the crime and the confrontation was short; thus, the photographic identification was not so prejudicial that justice could not have been done, and the trial court did not err when it allowed the witness to make an in-court identification of defendant. State v. Farmer, — N.C. App. —, 630 S.E.2d 244, 2006 N.C. App. LEXIS 1201 (2006).

Admissibility of Photograph. —

Denial of defendant's motion to suppress a pretrial photo line was proper where none of the five other photos chosen indicated unfairness, nor were they unduly suggestive, and, while the trial court recognized the witness' confusion, it gave weight to a detective's testimony. State v. Tutt, 171 N.C. App. 518, 615 S.E.2d 688, 2005 N.C. App. LEXIS 1313 (2005).

VII. TAKING OF PRIVATE PROPERTY FOR PUBLIC USE.

E. Illustrative Cases.

Taking Not Found. — When a city paid consideration for a sewer line easement to plaintiffs' predecessor in title, and later abandoned the easement and left a sewer pipe in the ground in question, this did not amount to a taking. The city had paid just compensation to the predecessor in title, and plaintiffs were entitled to nothing more. Frances L. Austin Family L.P. v. City of High Point, — N.C. App. —, 630 S.E.2d 37, 2006 N.C. App. LEXIS 1198 (2006).

IX. MISCELLANEOUS RIGHTS.

Resolution Restricting Vested Allowance was Improper. — County's resolution, pursuant to its authority under G.S. 143-166.42, restricting a former officer's ability to collect a special separation allowance, impaired the obligation of the state's contract with former officer under the retirement system; because the resolution was enacted after the former officer had retired and his right to receive the special separation had become vested, it was improper. Wiggs v. Edgecombe County, — N.C. App. —, 632 S.E.2d 249, 2006 N.C. App. LEXIS 1645 (2006).

XI. ILLUSTRATIVE CASES.

A. Statutes, Proceedings, etc., Upheld.

Criminal Statutes. —

Since a convicted felon's re-acquired right to bear arms was subject to regulation and was not completely abridged by a subsequent amendment to G.S. 14-415.1, which prohibited the ex-felon from possessing handguns outside his home or business, and since the regulation was reasonably related to further securing the public's safety, there was no interference with any vested right when the statute was amended to include the ex-felon; he was properly convicted and sentenced for violating the statute without any violation of his right to due process. State v. Johnson, 169 N.C. App. 301, 610 S.E.2d 739, 2005 N.C. App. LEXIS 612 (2005).

Sex Offender Registration Requirement. —

North Carolina's sex offender registration statute, G.S. 14-208.11, is facially constitutional as applied to a convicted sex offender from another jurisdiction, who subsequently moved to North Carolina, because such a defendant has actual notice of his or her lifelong duty to register as a result of his or her out-of-state conviction, which provides a reasonable individual to inquire of a duty to register in any state upon relocation. State v. Bryant, 359 N.C. 554, 614 S.E.2d 479, 2005 N.C. LEXIS 647 (2005).

B. Statutes, Proceedings, etc., Held Unconstitutional.

Workers' Compensation Recovery Provision. — Court of Appeals of North Carolina holds that the time limitation in the fourth paragraph of G.S. 97-61.6 violates the Equal Protection Clauses of U.S. Const., Amend. XIV and N.C. Const. art. I, § 19 under the rational basis test because the statute imposes an additional burden for recovery — a shorter time frame for death benefits claims — for asbestosis or silicosis, and no rational basis exists for treating such occupational diseases differently from other latent occupational diseases. Payne v. Charlotte Heating & Air Conditioning, 172 N.C. App. 496, 616 S.E.2d 356, 2005 N.C. App. LEXIS 1782 (2005).

Sec. 20. General warrants.

CASE NOTES

I. General Consideration.
II. Warrantless Searches.
III. Search Warrants.

I. GENERAL CONSIDERATION.

Reasonable Suspicion for Investigatory Stop. —
Defendant was not illegally seized in contravention of his constitutional rights, as an officer did not tell defendant he could not leave, defendant had consented to speak with the officer, and the officer had not restrained defendant's freedom to walk away. Defendant had no driver's license with him and did not know the name of a friend to whom his car belonged; these articulable facts were sufficient to give rise to a reasonable suspicion in the mind of a trained police officer that defendant was involved in criminal activity, and the trial court did not err in denying defendant's motion to suppress. State v. Campbell, 359 N.C. 644, 617 S.E.2d 1, 2005 N.C. LEXIS 842 (2005).

Dog Sniff. — Trial court's denial of defendant's motion to suppress had to be vacated, as the judgment denying that motion was null and void because it was entered out of county, out of term, and out of session; as a result, the trial court had to hold a new suppression hearing, and at that time the court could consider whether defendant's constitutional rights were violated by a police officer's dog sniff of defendant's vehicle while defendant was detained at a checkpoint used to determine the validity of drivers' licenses and vehicle registrations, which led to the discovery that defendant possessed marijuana and cocaine. State v. Branch, — N.C. App. —, 627 S.E.2d 506, 2006 N.C. App. LEXIS 713 (2006).

Search Exceeded Scope of Consent. — Search of defendant's van, which included the officer's removal of a plastic wall panel, exceeded the scope of defendant's consent and thus, violated the Fourth Amendment and N.C. Const. art. 1, § 20. Among other things, there was no evidence nor finding of fact suggesting that the officer suspected that the van contained contraband or that defendant was involved in criminal conduct. State v. Johnson, — N.C. App. —, 627 S.E.2d 488, 2006 N.C. App. LEXIS 695 (2006).

II. WARRANTLESS SEARCHES.

Search of Automobiles and Conveyances. —
Trial court properly denied defendant's motion to suppress evidence seized from his car after it was stopped for a traffic violation, as the search of the vehicle was based on defendant's unlimited consent, and further, information received from a passenger as to where contraband could be found in the vehicle justified the search under the automobile exception to the warrant requirement, pursuant to U.S. Const., Amend. IV and N.C. Const. art. I, § 20. State v. Baublitz, 172 N.C. App. 801, 616 S.E.2d 615, 2005 N.C. App. LEXIS 1778 (2005).

Where the police officer stopped defendant for a traffic violation, the officer had a reasonable suspicion pursuant to N.C. Const. art. I, § 20 and U.S. Const. amend. IV to expand the scope of the detention; defendant, who was seated next to the officer in the patrol car while the officer wrote a traffic citation, exhibited extremely nervous behavior, including a heartbeat that was visible through defendant's shirt, and defendant gave inconsistent responses as to where defendant was going. State v. Hernandez, 170 N.C. App. 299, 612 S.E.2d 420, 2005 N.C. App. LEXIS 1006 (2005).

Probable Cause to Stop Defendant's Vehicle. —
Police officer had probable cause pursuant to U.S. Const. amend. IV and N.C. Const. art. I, § 20 to stop defendant's vehicle because the officer witnessed defendant remove his seat belt while driving, a violation of G.S. 20-135.2A(a). State v. Hernandez, 170 N.C. App. 299, 612 S.E.2d 420, 2005 N.C. App. LEXIS 1006 (2005).

Warrantless Search Upheld. —
Police had reasonable suspicion that defendant was transporting drugs, and their warrantless stop of defendant's van was proper,

where a confidential informant told police that defendant would be transporting drugs and defendant was seen by police driving the van described by the informant along the suspected drug route; after the stop, defendant's consent for an officer to enter the van and the odor of cocaine smelled by the officer inside the van justified the officers' warrantless search of the van. State v. Downing, 169 N.C. App. 790, 613 S.E.2d 35, 2005 N.C. App. LEXIS 801 (2005).

Warrantless Search Held Improper. —

Although an officer's stop of a vehicle in which defendant was a passenger was supported by reasonable suspicion based on the officer's observation of the vehicle speeding, the officer's search of defendant's person exceeded the scope of defendant's consent; after defendant gave the officer consent to search his person, the officer pulled defendant's sweat pants away from defendant's body and trained his flashlight on defendant's groin area, where he saw the top of a pill bottle. State v. Stone, — N.C. App. —, 634 S.E.2d 244, 2006 N.C. App. LEXIS 1922 (2006).

Because a reasonable officer observing defendant turn right without signaling when no other vehicle was affected would not have had probable cause to believe a traffic violation had occurred, the seizure and subsequent search of defendant's vehicle were unreasonable and violated defendant's rights under the Fourth Amendment and N.C. Const. art. I, § 20. State v. Ivey, 360 N.C. 562, 633 S.E.2d 459, 2006 N.C. LEXIS 844 (2006).

Voluntary Consent. —

Where defendant gave consent to the search of defendant's vehicle while defendant was seated in the patrol car with the officer who was writing defendant's traffic citation, the consent was validly given pursuant to G.S. 15A-222, N.C. Const. art. I, § 20, and U.S. Const. amend. IV; the officer read a consent form to defendant which defendant signed, and defendant stated that defendant believed defendant was free to leave after the citation was issued. State v. Hernandez, 170 N.C. App. 299, 612 S.E.2d 420, 2005 N.C. App. LEXIS 1006 (2005).

Girlfriend's consent to search defendant's residence was voluntary where there was no evidence that defendant's girlfriend, who was in the hospital with shoulder pain at the time she gave consent, was not in possession of her mental faculties at the time consent was given. State v. Watson, — N.C. App. —, 634 S.E.2d 231, 2006 N.C. App. LEXIS 1923 (2006).

III. SEARCH WARRANTS.

Affidavit Sufficient to Support Finding of Probable Cause Despite Alleged False Statements Contained Therein. — Affidavit containing allegedly false statements was not invalid where other statements supported finding of probable cause; among other things, the unchallenged statements showed that 20 different sources complained to police about criminal activity at the subject residence and a confidential informant made a controlled buy of cocaine at the residence. State v. Boyd, — N.C. App. —, 628 S.E.2d 796, 2006 N.C. App. LEXIS 854 (2006).

Stop of Vehicle After Defendant Turned Away Just Prior to Checkpoint. — Denial of motion to suppress was upheld as totality of circumstances justified officer's pursuing and stopping defendant's vehicle to inquire as to why defendant turned away before checkpoint. In addition to the fact of defendant's legal turn immediately prior to the checkpoint, the following facts combined to allow the officer to make a reasonable inquiry to determine whether defendant was trying to evade the checkpoint: (1) the late hour; (2) the sudden braking of the truck when defendant crested the hill and could see the checkpoint, to the point that the headlights dipped as the front of the truck dove towards the street; (3) the abruptness of defendant's turn into the nearest apartment parking lot; and (4) defendant's behavior in first backing the truck into one space, pulling out and proceeding towards the parking lot exit, and then re-parking when he spotted the patrol car approaching him. State v. Bowden, — N.C. App. —, 630 S.E.2d 208, 2006 N.C. App. LEXIS 1218 (2006).

Sec. 22. Modes of prosecution.

CASE NOTES

A valid indictment is a condition precedent, etc.

Remand for re-sentencing on felony child abuse inflicting serious physical injury was improper because the indictment failed to allege an essential element required for proof of that crime: that injury be inflicted by a parent or any other person providing care to or supervision of a child less than 16 years of age; however, the indictment and jury verdict did support a conviction for class A1 misdemeanor assault. State v. Locklear, — N.C. App. —, 632 S.E.2d 516, 2006 N.C. App. LEXIS 1641 (2006).

Aggravating Circumstances for the Death Penalty. — Heinous, atrocious, or cruel aggravating circumstance under G.S. 15A-2000(e)(9) was argued to be unconstitutionally vague and overbroad, and that that vagueness could not be cured through appellate narrowing after Ring; although the issue was not raised in the lower court so as to be properly addressed on appeal, the highest court found the issue to be in the public interest, addressed the issue to further develop its jurisprudence under N.C. R. App. P. 2, and determined that the circumstance was constitutional under the Sixth Amendment because (1) the pattern jury instructions included language approved by the Court that narrowed the definition of the circumstance, and (2) the appellate review of the circumstance as submitted to the jury did not make the appellate court a "co-finder of fact" with the jury. State v. Duke, 360 N.C. 110, 623 S.E.2d 11, 2005 N.C. LEXIS 1314 (2005).

Motion to Suppress Properly Denied. — Because defendant's initial seizure and incarceration were not unconstitutional, the trial court did not err in denying defendant's motion to suppress the evidence seized from defendant's person. State v. Hocutt, — N.C. App. —, 628 S.E.2d 832, 2006 N.C. App. LEXIS 966 (2006).

Sec. 23. Rights of accused.

CASE NOTES

I. General Consideration.
II. Right to Be Informed of Accusation.
III. Right of Confrontation.
  A. In General.
  B. Illustrative Cases.
IV. Right to Counsel.
  A. In General.
V. Self-incrimination.
  A. In General.
  B. Confessions.

I. GENERAL CONSIDERATION.

Interrogation. — Second interrogation of a defendant was not unconstitutional under the facts of the case, and the trial court did not err by admitting the statement obtained by law enforcement officials during that second interrogation because uncontradicted evidence introduced during the suppression hearing supported the conclusion that the law enforcement officials involved in the investigation of one incident honored the defendant's invocation of his right to remain silent regarding another incident, and thereafter no questioning touched on that other incident and fresh Miranda warnings were given. State v. Jacobs, 174 N.C. App. 1, 620 S.E.2d 204, 2005 N.C. App. LEXIS 2279 (2005).

Right to Remain Silent Not Violated. — State's cross-examination of defendant and its closing argument did not violate defendant's right to remain silent; it was not apparent that the State was commenting on post-Miranda silence when the State asked defendant "So, you didn't want to the them (the police) that you had acted in self-defense?" In addition, the closing argument was not improper and was supported by witnesses' testimony. State v. Herndon, — N.C. App. —, 629 S.E.2d 170, 2006 N.C. App. LEXIS 961 (2006).

Defense Counsel Not Ineffective for Failing to Object Where Testimony Properly Admitted. — Testimony regarding an officer's interaction with a detective and a third individual was non-hearsay since it was not admitted to prove the truth of the matter asserted, but rather to show how the officer formed a reasonable suspicion that defendant was involved in the robbery at issue, which in turn justified including defendant's photo in a lineup shown to the robbery victim; since this testimony was properly admitted, defense counsel was not ineffective for failing to object to it. State v. Alexander, — N.C. App. —, 628 S.E.2d 434, 2006 N.C. App. LEXIS 843 (2006).

Applied in State v. Duke, 360 N.C. 110, 623 S.E.2d 11, 2005 N.C. LEXIS 1314 (2005); State v. Love, — N.C. App. —, 630 S.E.2d 234, 2006 N.C. App. LEXIS 1189 (2006).

Cited in State v. Campbell, 359 N.C. 644, 617 S.E.2d 1, 2005 N.C. LEXIS 842 (2005).

II. RIGHT TO BE INFORMED OF ACCUSATION.

But Special Form or Particular Words Are Not Required. —
Since no conclusion could be reached by reading the indictment other than that defendant was in custody at the time he allegedly committed malicious conduct by a prisoner, the trial court had jurisdiction over his case, as the State adequately alleged the offense such that defendant was notified of the offense against which he was called to defend. State v. Artis, — N.C. App. —, 622 S.E.2d 204, 2005 N.C. App. LEXIS 2610 (2005).

III. RIGHT OF CONFRONTATION.

A. In General.

Admission of Business Records Did Not Violate Defendant's Right of Confrontation. — State investigative reports that gave the results of DNA tests incriminating defendant were properly admitted at his trial for murder and rape under G.S. 8C-1, N.C. R. Evid. 803(8), as public records, even though the investigator who made the records did not testify. His supervisor testified, the reports concerned routine matters and recorded only ministerial observations, and defendant's right of confrontation was not violated. State v. Forte, 629 S.E.2d 137, 2006 N.C. LEXIS 45 (2006).

Admission of nonhearsay raises no Confrontation Clause concerns; testimony regarding an officer's interaction with a detective and a third individual was non-hearsay, and raised no Confrontation Clause concerns, since it was not admitted to prove the truth of the matter asserted, but rather to show how the officer formed a reasonable suspicion that defendant was involved in the robbery at issue, which in turn justified including defendant's photo in a lineup shown to the robbery victim. State v. Alexander, — N.C. App. —, 628 S.E.2d 434, 2006 N.C. App. LEXIS 843 (2006).

DNA Tests Incriminating Defendant Properly Admitted. — State investigative reports that gave the results of DNA tests incriminating defendant were properly admitted at his trial for murder and rape as business records under G.S. 8C-1-803(6), even though the investigator who made the reports did not testify. His supervisor testified, and the reports were not testimonial but were neutral and were not prepared exclusively for trial, and defendant's right of confrontation was not violated. State v. Forte, 360 N.C. 427, 629 S.E.2d 137, 2006 N.C. LEXIS 45 (2006).

B. Illustrative Cases.

Admission of Hearsay Evidence Pursuant to an Exception for an Unavailable Declarant. — Appellate court erred in finding that defendant's right to confrontation pursuant to N.C. Const. art. I, § 23 was violated by allowing an officer to testify pursuant to G.S. 8C-1, N.C. R. Evid. 804(b)(5), that the deceased victim picked defendant from a lineup; although the hearsay statement was testimonial, and thus implicated the confrontation clause, the error was harmless pursuant to G.S. 15A-1443(b), as the outcome of the trial probably would have been the same if the lineup was excluded. State v. Lewis, 360 N.C. 1, 619 S.E.2d 830, 2005 N.C. LEXIS 1000 (2005).

Admission of Deposition Testimony of State's Absent Witness. — Even though it was error to admit the State's physician's deposition testimony at defendant's murder trial even though the defendant took advantage of his right to cross examine the physician at the deposition, because the defendant did not have the right to confront him at trial; the error was harmless error in view of the overwhelming testimonial and other evidence that the victim died and of the defendant's guilt. State v. Ash, 169 N.C. App. 715, 611 S.E.2d 855, 2005 N.C. App. LEXIS 809 (2005), cert. denied, appeal dismissed, 360 N.C. 66, 621 S.E.2d 878 (2005).

Admission of Hearsay Evidence Where the Declarant was Unavailable. — For purposes of a claim of a confrontation clause violation under N.C. Const. art. I, § 23, a trial court's confrontation clause analysis of a statement should proceed as follows: the initial determination is whether the statement is testimonial or nontestimonial, and if the statement is testimonial, the trial court must then ask whether the declarant is available or unavailable to testify during the trial; if the declarant is unavailable pursuant to the G.S. 8C-1, N.C. R. Evid. 804(b)(5) hearsay exception, the trial court must determine whether the accused had a prior opportunity to cross-examine the declarant about this statement, and if the accused had such an opportunity, the statement may be admissible if it is not otherwise excludable hearsay, but if the accused did not have this opportunity, the statement must be excluded. State v. Lewis, 360 N.C. 1, 619 S.E.2d 830, 2005 N.C. LEXIS 1000 (2005).

Violation of Confrontation Clause Was Not Shown. —

There was no error in the limitation on defendant's cross-examination of the victim where the reasons for her unwillingness to testify and the possibility of her being held in contempt did not bear on her credibility or bias toward defendant, nor was whether she believed defendant had been tried "enough" relevant to any matter at issue in the trial. State v. Jacobs, 172 N.C. App. 220, 616 S.E.2d 306, 2005 N.C. App. LEXIS 1586 (2005).

Because defendant's cross-examination was not restricted by law, and the trial court did not limit the scope of the examination, defendant's only limitation in cross-examining the police captain was his inability to play the lost videotape to the jury, and defendant had ample opportunity to cross-examine the captain regarding the quality of the videotape, his viewing of the videotape, and about what he saw on the videotape; defendant's confrontation rights under the Sixth Amendment were vindicated and his right to confrontation under N.C. Const. art. I, § 23 was not violated. State v. Thorne, 173 N.C. App. 393, 618 S.E.2d 790, 2005 N.C. App. LEXIS 2031 (2005).

Denial of Continuance Motion. — Trial court did not err in denying defendant's motion for a continuance where the state, in defendant's attempted first-degree murder and assault with a deadly weapon case, presented defendant with a statement on the morning of trial that it had obtained from the man who had allegedly sold defendant the gun used in the shootings involved in defendant's case; defendant had not shown evidence that he would have been better prepared had the motion to continue been granted or that he was materially prejudiced by the denial of his motion, and defendant was given a recess by the trial court to allow his counsel to interview the man. State v. Bethea, 173 N.C. App. 43, 617 S.E.2d 687, 2005 N.C. App. LEXIS 1907 (2005).

IV. RIGHT TO COUNSEL.

A. In General.

Ineffective Representation Not Shown. —

Counsel's decision to pursue a theory of sexual asphyxiation or accident instead of suicide was a defense strategy that could not be second-guessed on appeal State v. Scanlon, — N.C. App. —, 626 S.E.2d 770, 2006 N.C. App. LEXIS 541 (2006).

Where defendant was convicted of raping a 13-year-old female, defense counsel was not ineffective for failing to stipulate to the chain of custody of the products of conception to avoid introducing them into evidence; any error was harmless as there was no reasonable probability that the alleged error affected the outcome of the trial. State v. Watts, 172 N.C. App. 58, 616 S.E.2d 290, 2005 N.C. App. LEXIS 1588 (2005).

Because there was no plain error in the failure to provide a voluntary intoxication instruction to the jury, defendant's assertion of ineffective assistance of counsel with respect thereto failed; defendant's evidence concerning his low I.Q., smoking marijuana, and sharing alcohol over the course of an evening was not so overwhelming as to render the lack of a voluntary intoxication instruction prejudicial. State v. Andrews, 170 N.C. App. 68, 612 S.E.2d 178, 2005 N.C. App. LEXIS 891 (2005).

Where defendant was sentenced within the presumptive range as a Level VI habitual felon, because he was given a very favorable plea bargain in which twenty-one felony offenses were consolidated for judgment with the original ten felony offenses such that defendant received no additional time for these twenty-one felonies, his sentence was upheld pursuant to G.S. 15A-1340.12, and counsel was not ineffective for failing to object to the sentence as violative of the Eighth Amendment and on grounds that legislative policy considerations constitute ineffective assistance of counsel. State v. Cummings, — N.C. App. —, 622 S.E.2d 183, 2005 N.C. App. LEXIS 2618 (2005).

Defendant did not show that he received ineffective assistance of counsel, as counsel's decision to ask a witness about out-of-court statements made by defendant's cousin was a tactical decision, which an appellate court would not second guess. State v. Medina, — N.C. App. —, 622 S.E.2d 176, 2005 N.C. App. LEXIS 2608 (2005).

Mere fact that the state asked defendant to stipulate to a prior felony that did not correspond to the prior felony stated in the indictment did not render the error a substantive evidentiary one attributable to the state; instead, the record revealed an intention by defense counsel, after conferring with defendant, to stipulate to a prior felony and an assumption by the state that the stipulation relieved it of the burden of establishing that element of the possession of a firearm by a felon charge. State v. Mason, 174 N.C. App. 206, 620 S.E.2d 285, 2005 N.C. App. LEXIS 2292 (2005).

As defendant's denial of his pointing of any gun was inconsistent with the defenses of necessity or justification, defendant's attorney made a tactical decision to present a theory of defense based upon defendant's own statements to police; as such, defense counsel's decision not to request jury instructions on necessity and justification with respect to a charge of assault by pointing a gun could not be ineffective assistance of counsel. State v. Langley, 173 N.C. App. 194, 618 S.E.2d 253, 2005 N.C. App. LEXIS 1920 (2005).

Defense counsel's decision to address defendant's repeated lies to defense counsel and others was a prudent stop in pulling the sting from damaging evidence and did not amount to ineffective assistance. State v. Campbell, — N.C. App. —, 629 S.E.2d 345, 2006 N.C. App. LEXIS 1049 (2006).

Defendant's first degree murder conviction for stabbing his wife to death was affirmed because defendant failed to show ineffective assistance of counsel as he did not meet his burden of showing a reasonable probability that, but for defense counsel's failure to raise an issue at trial, the result of his proceedings would have been different. State v. Nguyen, — N.C. App. —, 632 S.E.2d 197, 2006 N.C. App. LEXIS 1571 (2006).

Defendant's claim of ineffective assistance of counsel failed because defendant failed to satisfy his burden that there was a reasonable probability that a different outcome would have occurred if counsel had presented additional evidence of defendant's drug and alcohol problem. State v. Laney, — N.C. App. —, 631 S.E.2d 522, 2006 N.C. App. LEXIS 1398 (2006).

Right to Counsel May Be Waived. —

First degree felony murder and conspiracy to commit robbery with dangerous weapon convictions were affirmed since the trial court's decision to admit a videotape of the defendant's post-Miranda interrogation was properly based on substantial evidence that he (1) signed a waiver of, and (2) never made a clear, unambiguous, and unequivocal assertion of his right to counsel, and did not assert his right to remain silent. State v. Ash, 169 N.C. App. 715, 611 S.E.2d 855, 2005 N.C. App. LEXIS 809 (2005), cert. denied, appeal dismissed, 360 N.C. 66, 621 S.E.2d 878 (2005).

V. SELF-INCRIMINATION.

A. In General.

Adverse comments on defendant's failure to testify are impermissible, etc — Defendant's Fifth Amendment and N.C. Const. art I, § 23 rights were violated where the prosecutor's statements referred repeatedly to defendant's silence, not merely to his behavior, and clearly urged the jury to infer that defendant was sane enough to know that remaining silent was in his best interest; the error was not harmless beyond a reasonable doubt as the only real issue was whether defendant was legally insane at the time of the murder, three mental health experts testified that they believed defendant was legally insane, and lay witnesses and circumstances presented the only evidence of defendant's sanity. State v. Durham, — N.C. App. —, 623 S.E.2d 63, 2005 N.C. App. LEXIS 2752 (2005).

Right to Remain Silent Not Violated. — Trial court did not violate defendant's right to remain silent where the police detective testified that defendant was quiet during questioning and often refused to respond to questions, and where the prosecutor referred to this testimony during closing arguments; the detective was asked about defendant's demeanor during questioning, not defendant's exercise of the right to remain silent, as defendant had waived defendant's Miranda rights and had agreed to speak with the detective. State v. Lyles, 172 N.C. App. 323, 615 S.E.2d 890, 2005 N.C. App. LEXIS 1424 (2005), appeal dismissed, 360 N.C. 73, 622 S.E.2d 625 (2005).

B. Confessions.

When Confession Is Admissible. — First degree felony murder and conspiracy to commit robbery with dangerous weapon convictions were affirmed since the trial court's decision to admit a videotape of the defendant's post-Miranda interrogation was properly based on substantial evidence that he (1) signed a waiver of, and (2) never made a clear, unambiguous, and unequivocal assertion of his right to counsel, and did not assert his right to remain silent. State v. Ash, 169 N.C. App. 715, 611 S.E.2d 855, 2005 N.C. App. LEXIS 809 (2005), cert. denied, appeal dismissed, 360 N.C. 66, 621 S.E.2d 878 (2005).

Intoxication when Confession Is Made. —

Defendant claimed his Miranda waiver and confessions were affected by alcohol and precription drugs; the voluntariness of his Miranda waiver and confessions were supported by an officer's testimony that the defendant was attentive and very coherent and very understanding when he was read his Miranda rights. State v. Tuck, 173 N.C. App. 61, 618 S.E.2d 265, 2005 N.C. App. LEXIS 1930 (2005).

Confession Held Voluntary. — Defendant's post-Miranda statement was admissible because defendant was a 30-year-old high school graduate with experience in the criminal justice system based upon his numerous prior arrests, defendant was not threatened after being advised of his Miranda rights orally and in writing, defendant waived his Miranda rights orally and in writing, defendant did not ask to speak to an attorney, and the officers advised defendant of the charge, the possible sentence he could receive, the need for him to be truthful and help himself out by cooperating; and told defendant that if he cooperated his cooperation would be related to the district attorney's office and the judge. State v. Houston, 169 N.C. App. 367, 610 S.E.2d 777, 2005 N.C. App. LEXIS 606 (2005).

Defendant's first degree murder conviction was affirmed because the trial court did not err by denying defendant's motion to suppress his written confession as defendant's written waiver of his Miranda rights and his written confession were made understandingly, knowingly, and voluntarily with the assistance of a police officer who acted as defendant's interpreter. State v. Nguyen, — N.C. App. —, 632 S.E.2d 197, 2006 N.C. App. LEXIS 1571 (2006).

Sec. 24. Right of jury trial in criminal cases.

CASE NOTES

I. In General.
II. Unanimous Verdict of Twelve.

I. IN GENERAL.

Inquiry Into Alleged Communication Between Prosecution and Juror Was Not Required. — Trial court did not err by refusing to inquire further into an alleged communication between the prosecution and a juror where there was no indication that the alleged inappropriate communication had any influence on the juror or the verdict of the entire jury; there was no evidence that the juror heard what the assistant district attorney discussed with the clerk in the courtroom, in the presence of the court. State v. Jacobs, 172 N.C. App. 220, 616 S.E.2d 306, 2005 N.C. App. LEXIS 1586 (2005).

Determination of Appropriate Sentence. —

Defendant's right to a jury trial was violated where a sentence was enhanced based on the fact that he committed a crime while on probation; probationary status should have been a factor determined by a jury. State v. Shine, 173 N.C. App. 699, 619 S.E.2d 895, 2005 N.C. App. LEXIS 2306 (2005).

Multiple Short-Form Indictments Did Not Create a Danger of Ununanimous Verdicts. — Appellate court erred in reversubg defendant's convictions of first-degree statutory rape, G.S. 14-27.2, and taking indecent liberties with a minor, G.S. 14-202.1(a)(1), as defendant was properly charged by short-form indictments on all the charges as authorized by G.S. 15-144.2(a), because there was no danger of a nonunanimous verdict resulting from the multiple indictments in violation of N.C. Const. art. 1, § 24, and G.S. 15A-1237(b), as even if some jurors disagreed on the kinds of sexual misconduct committed, the jury as a whole would unanimously find that there occurred sexual conduct within the ambit of any immoral, improper, or indecent liberties as required by G.S. 14-202.1(a)(1), and because defendant was indicted on five counts of statutory rape, the victim testified to five specific incidents of statutory rape, and five verdicts of guilty were returned. State v. Lawrence, 360 N.C. 368, 627 S.E.2d 609, 2006 N.C. LEXIS 30 (2006).

Cited in State v. Norris, 360 N.C. 507, 630 S.E.2d 915, 2006 N.C. LEXIS 592 (2006).

II. UNANIMOUS VERDICT OF TWELVE.

Unanimous Verdict of 12 Required. —

Defendant's convictions on five counts of statutory rape and three counts of taking indecent liberties with a child had to be reversed, and he had to be retried on those charges, as the State's proof at trial of many more acts than were pled in those counts meant that the appellate court could not determine whether defendant was found guilty by the required unanimous jury on the counts pled or some other acts that were not pled; accordingly, defendant's right to conviction by a unanimous jury may have been compromised. State v. Lawrence, 170 N.C. App. 200, 612 S.E.2d 678, 2005 N.C. App. LEXIS 1016 (2005).

Determination of Ambiguity As to Verdict Unanimity. —

Because of the trial court's failure to ensure that each juror had in mind the same instances of abuse when voting to convict defendant of multiple counts of first-degree sexual offense and indecent liberties with a minor, defendant's right to a unanimous jury verdict was jeopardized. State v. Bates, 172 N.C. App. 27, 616 S.E.2d 280, 2005 N.C. App. LEXIS 1585 (2005).

Defendant's right to a unanimous verdict was not violated where the instructions and verdicts contained specific references to the date, act, and location of the alleged acts of first-degree sexual offense. Defendant's right to a unanimous verdict was violated, however, with regard to the charges for felonious sexual contact because the verdict sheets and instructions as to eight of the ten charges were not specific enough to allow the court to determine which specific act each juror had in mind when voting the those counts, and as to the indecent liberties charges because the court was not able to determine whether each juror had in mind the same four incidents when voting to convict defendant on those charges. State v. Massey, 174 N.C. App. 216, 621 S.E.2d 633, 2005 N.C. App. LEXIS 2400 (2005).

Trial judge correctly instructed jury, etc. —

Trial court did not err by allowing defendant to be convicted with fewer than 12 jurors finding him guilty because the trial court's use of the term "consensus" in an instruction did not violate the verdict unanimity requirement, as the trial judge twice repeated that the jury had to unanimously agree on a verdict. State v. Flemming, 171 N.C. App. 413, 615 S.E.2d 310, 2005 N.C. App. LEXIS 1260 (2005).

No Violation of Right to Unanimous Verdict. —

There was no risk of a lack of unanimity where defendant was charged with and convicted of the same number of offenses, and the evidence supported that number of offenses, and using the same underlying act to support convictions for both first-degree sexual offense and indecent liberties did not violate defendant's constitutional protection against double jeopardy; where the instructions told jury that it must "agree unanimously" on particular sex offenses and limited consideration of first-degree sexual offenses to the approximate dates on which they were alleged to have occurred and to a specific act, and dates and acts corresponded with the evidence, the instructions were proper and there was no lack of unanimity. State v. Brewer, 171 N.C. App. 686, 615 S.E.2d 360, 2005 N.C. App. LEXIS 1363 (2005).

Defendant's right to an unanimous verdict under N.C. Const. art. I, § 24, G.S. 15A-1201, and G.S. 15A-1237(b) was not violated by generic testimony, or evidence of more incidents than there were criminal charges. State v. Bullock, — N.C. App. —, 631 S.E.2d 868, 2006 N.C. App. LEXIS 1572 (2006).

Insufficient Evidence Regarding Jurors Praying. — There was insufficient evidence to show the asserted ground for relief as defendant maintained in his motion for appropriate relief under G.S. 15A-1420 that two jurors had prayed together outside the jury room in his death penalty case. This was not shown to have been misconduct as defendant did not present documentary evidence. G.S. 15A-1420(b) required, that those jurors had discussed the case while they prayed, and their prayers did not constitute "deliberation" outside of the jury room, such that would have violated defendant's right to have a jury of 12 jurors under N.C. Const. art. I, § 24. State v. Elliott, 360 N.C. 400, 628 S.E.2d 735, 2006 N.C. LEXIS 46 (2006).

Sec. 26. Jury service.

CASE NOTES

Peremptory Challenges Upheld. —

Defendant failed to make a prima facie showing of racial discrimination with regard to the State's preemptory challenge of a prospective juror which was granted in defendant's trial for first-degree murder and the trial court, therefore, did not err in overruling defendant's Batson objection because, despite the juror being the first African American to have been challenged, other factors supported the trial court's ruling such as the fact that the victim and the State's three critical witnesses were all African American. Therefore, the case was not particularly susceptible to racial discrimination and the State neither made any racially motivated statements nor asked any racially motivated questions of the prospective juror. State v. Augustine, 359 N.C. 709, 616 S.E.2d 515, 2005 N.C. LEXIS 836 (2005).

The defendant did not make a prima facie showing, etc. —

Under U.S. Const. amend. XIV, as well as N.C. Const. art. I, § 26, the State used a peremptory challenge to excuse an African-American prospective juror, however, the State offered race neutral reasons for the excusal, even though orher potential jurors may have given similar answers, that she (1) was against killing whether it was legal or illegally and that her opposition was based on religious, moral, and philosophical beliefs she had held since childhood, and (2) had a brother who had previously been convicted of armed robbery; the trial judge was in the best position to resolve this issue, having heard and seen the responses of the prospective juror, including her facial expressions, tone of voice, reactions, and other nuances that were not subject to translation when the appeals court reviewed the cold record on appeal. State v. McClain, 169 N.C. App. 657, 610 S.E.2d 783, 2005 N.C. App. LEXIS 804 (2005).

Sec. 27. Bail, fines, and punishments.

CASE NOTES

I. In General.
II. Particular Statutes.
III. Illustrative Cases.

I. IN GENERAL.

First-Degree Murder. — Defendant's right was not violated when the trial court set bond as "no bond" and "zero" because defendant was charged with first-degree murder, a crime for which, under G.S. 15A-533(c), the trial court had the discretion not to set bail. State v. Hocutt, — N.C. App. —, 628 S.E.2d 832, 2006 N.C. App. LEXIS 966 (2006).

Applied in State v. Duke, 360 N.C. 110, 623 S.E.2d 11, 2005 N.C. LEXIS 1314 (2005); State v. Hurst, 360 N.C. 181, 624 S.E.2d 309, 2006 N.C. LEXIS 7 (2006).

II. PARTICULAR STATUTES.

Habitual Felon Act. — Defendant's constitutional challenges to his sentence as an habitual felon failed because (1) the North Carolina Habitual Felon Act was not violative of the Separation of Powers Clause; (2) there was no double jeopardy infirmity inherent in the Habitual Felon Act as applied in conjunction with the North Carolina Structured Sentencing Act; and (3) the state appellate court and the state supreme court have rejected constitutional challenges to the Habitual Felon Act based on allegations of cruel and unusual punishment. State v. McIlwaine, 169 N.C. App. 397, 610 S.E.2d 399, 2005 N.C. App. LEXIS 607 (2005).

III. ILLUSTRATIVE CASES.

False pretenses enhanced by habitual

offender status. — Defendant had a lengthy criminal record and was sentenced accordingly for G.S. 14-100 false pretenses, which sentence was enhanced by his status of being an habitual offender under G.S. 14-7.6; the sentence of 142 months to 180 months was within the range for a Class C level V felon, was not disproportionate to the defendant's 25-year history of criminal convictions, and was not cruel and unusual under U.S. Const. amends. VIII, XIV. State v. Ledwell, 171 N.C. App. 314, 614 S.E.2d 562, 2005 N.C. App. LEXIS 1212 (2005).

Sec. 32. Exclusive emoluments.

CASE NOTES

Extinguishment of County's Subrogation Lien Against Injured Employee. — Trial court did not abuse its discretion in extinguishing a county's subrogation lien against a deputy sheriff regarding a settlement that he received following an injury in the course of his employment because G.S. 97-10.2(j) did not violate the Exclusive Emoluments Clause of N.C. Const. art. I, § 32. Helsius v. Robertson, — N.C. App. —, 621 S.E.2d 263, 2005 N.C. App. LEXIS 2469 (2005).

ARTICLE II

LEGISLATIVE

Section 1. Legislative power.

CASE NOTES

Distinction between Delegating Power to Make Law and Conferring Authority as to Its Execution. —

Trial court did not err in granting summary judgment to the governor, state public safety agency, state highway patrol, and certain unidentified persons, and denying the wrecker service owner's motion for summary judgment on the wrecker service owner's declaratory judgment action seeking a determination that regulations used to remove his wrecker service business from the state's Wrecker Rotation Services List were illegal and that the regulations were preempted by federal law; the trial court had the authority to declare that the regulations were not illegal because the General Assembly granted to the state public safety agency the power to direct the state highway patrol to establish regulations for private wrecker services. Ramey v. Easley, — N.C. App. —, 632 S.E.2d 178, 2006 N.C. App. LEXIS 1308 (2006).

Party Benefitting From Agency Action May Not Later Challenge It On Separation of Powers Grounds. — As a taxpayer sought, received, and benefitted from a variance from G.S. 105-130.4(t)'s tax allocation formula, it could not challenge, on separation-of-powers grounds, orders of the augmented North Carolina Tax Review Board that granted the variance. Philip Morris USA Inc. v. Tolson, — N.C. App. —, 626 S.E.2d 853, 2006 N.C. App. LEXIS 536 (2006).

Agency Did Not Violate Separation of Powers Doctrine. — Augmented North Carolina Tax Review Board did not violate the separation of powers doctrine by creating a special tax allocation formula for a multi-state corporation, because in so doing, it only exercised the powers expressly reserved for it by the general assembly under G.S. 105-130.4(t). Philip Morris USA Inc. v. Tolson, — N.C. App. —, 626 S.E.2d 853, 2006 N.C. App. LEXIS 536 (2006).

Sec. 24. Limitations on local, private, and special legislation.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in Property Rights Advocacy Group v. Town of Long Beach, 173 N.C. App. 180, 617 S.E.2d 715, 2005 N.C. App. LEXIS 1924 (2005).

ARTICLE III

EXECUTIVE

Sec. 4. Oath of office for Governor.

CASE NOTES

Cited in Goldston v. State, 173 N.C. App. 416, 618 S.E.2d 785, 2005 N.C. App. LEXIS 2012 (2005).

Sec. 5. Duties of Governor.

CASE NOTES

Power to Prevent a Deficit. — Governor's order directing the revenue secretary to halt expenditures for capital improvements, further reduce expenditures throughout state agencies, and withhold funds appropriated to local governments was authorized by N.C. Const. art. III, § 5(3) to prevent a deficit, and did not violate the separation of powers doctrine; further N.C. Const. art. V, § 5, which was directed at the general assembly, did not conflict with N.C. Const. art. III, § 5. County of Cabarrus v. Tolson, 169 N.C. App. 636, 610 S.E.2d 443, 2005 N.C. App. LEXIS 615 (2005).

Cited in Goldston v. State, 173 N.C. App. 416, 618 S.E.2d 785, 2005 N.C. App. LEXIS 2012 (2005).

ARTICLE IV

JUDICIAL

Sec. 12. Jurisdiction of the General Court of Justice.

CASE NOTES

I. General Consideration.
II. Supreme Court.
  A. In General.

I. GENERAL CONSIDERATION.

Cited in State v. Norris, 360 N.C. 507, 630 S.E.2d 915, 2006 N.C. LEXIS 592 (2006).

II. SUPREME COURT.

A. In General.

Where Lower Appellate Court's Decision is of Constitutional Magnitude and Widespread Effect. — While G.S. 15A-1422(f) normally barred collateral review of a resentencing decision, the statute could not interfere with the court's power under N.C. Const. art. IV, § 12, cl. 1 to issue a decision where the lower appellate court's decision was of constitutional magnitude and widespread effect; since the lower appellate court's decision applied to hold unconstitutional provisions of a widely used statute that was used to aggravate sentences for crimes, discretionary review was granted. State v. Allen, 359 N.C. 425, 615 S.E.2d 256, 2005 N.C. LEXIS 695 (2005).

Sec. 13. Forms of action; rules of procedure.

CASE NOTES

I. General Consideration.
IV. Rules of Procedure.

I. GENERAL CONSIDERATION.

Cited in Hill v. West, — N.C. App. —, 627 S.E.2d 662, 2006 N.C. App. LEXIS 692 (2006).

IV. RULES OF PROCEDURE.

Conflict Between G.S. 8C-1-103(a)(2) and N.C. R. App. P. 10(b)(1). — Constitution of North Carolina vests the Supreme Court of North Carolina with exclusive authority to make rules of practice and procedure for the appellate division of the courts; while G.S. 8C-1-103(a)(2) permitted appellate review of an evidentiary ruling even though the party failed to object at trial, since G.S. 8C-1-103(a)(2) was inconsistent with N.C. R. App. P. 10(b)(1), G.S. 8C-1-103(a)(2) failed. State v. Tutt, 171 N.C. App. 518, 615 S.E.2d 688, 2005 N.C. App. LEXIS 1313 (2005).

ARTICLE V

FINANCE

Sec. 2. State and local taxation.

CASE NOTES

I. General Consideration.
III. Public Purposes.
  B. Illustrative Cases.
IV. Classification.
  B. Illustrative Cases.

I. GENERAL CONSIDERATION.

Applied in Coley v. State, 360 N.C. 493, 631 S.E.2d 121, 2006 N.C. LEXIS 594 (2006).

III. PUBLIC PURPOSES.

B. Illustrative Cases.

Inlet Relocation. — Special assessment implemented for the relocation of an inlet was upheld under N.C. Const. art. V, § 2, cl. 1, because the assessment was imposed for a public purpose; there was a reasonable connection with the necessity of the county based on the policy of preserving beaches, and the project benefitted the public in general. Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

IV. CLASSIFICATION.

B. Illustrative Cases.

Sales Tax on Satellite Service Versus Cable Service. — G.S. 105-164.4(a)(6), which imposes a sales tax on direct-to-home satellite service, but not on cable television service, does not discriminate against satellite providers in favor of cable companies on its face and in its practical effect because the differential tax results solely from differences between the nature of the provision of satellite and cable services, and not from the geographical location of the businesses. DirecTV, Inc. v. State, — N.C. App. —, 632 S.E.2d 543, 2006 N.C. App. LEXIS 1651 (2006).

Sec. 5. Acts levying taxes to state objects.

CASE NOTES

Statute Authorizing County to Impose Tax. —

Governor's order directing the revenue secretary to halt expenditures for capital improvements, further reduce expenditures throughout state agencies, and withhold funds appropriated to local governments was authorized by N.C. Const. art. III, § 5(3) to prevent a deficit, and did not violate the separation of powers doctrine; further N.C. Const. art. V, § 5, which was directed at the general assembly, did not conflict with N.C. Const. art. III, § 5. County of Cabarrus v. Tolson, 169 N.C. App. 636, 610 S.E.2d 443, 2005 N.C. App. LEXIS 615 (2005).

Cited in Goldston v. State, 173 N.C. App. 416, 618 S.E.2d 785, 2005 N.C. App. LEXIS 2012 (2005).

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Sec. 7. Oath.

CASE NOTES

Cited in Goldston v. State, 173 N.C. App. 416, 618 S.E.2d 785, 2005 N.C. App. LEXIS 2012 (2005).

ARTICLE VII

LOCAL GOVERNMENT

Section 1. General Assembly to provide for local government.

CASE NOTES

Sheriff is Local Officer. —

Trial court properly denied summary judgment to sheriff and two detention center officers with regard to a former inmate's suit asserting a violation of her state and federal constitutional rights with regard to allegedly having been denied medical treatment for appendicitis while incarcerated at a county detention center. The sheriff and the officers were "persons" amendable to suit under 42 U.S.C.S. § 1983 and were not immune since the indifference shown, despite the inmate's repeated complaints of pain, was not protected by qualified immunity. Boyd v. Robeson County, 169 N.C. App. 460, 621 S.E.2d 1, 2005 N.C. App. LEXIS 2352 (2005).

In the State of North Carolina, a sheriff is a person amendable to suit under 42 U.S.C.S. § 1983. Boyd v. Robeson County, 169 N.C. App. 460, 621 S.E.2d 1, 2005 N.C. App. LEXIS 2352 (2005).

Applied in Kegley v. City of Fayetteville, 170 N.C. App. 656, 613 S.E.2d 696, 2005 N.C. App. LEXIS 1073 (2005), review denied, — N.C. —, 619 S.E.2d 508 (2005), cert. denied, — U.S. —, 126 S. Ct. 1147, 163 L. Ed. 2d 1001 (2006).

Sec. 2. Sheriffs.

CASE NOTES

Sheriffs Not Entitled to Eleventh Amendment Immunity. —

In the State of North Carolina, a sheriff is a person amendable to suit under 42 U.S.C.S. § 1983. Boyd v. Robeson County, 169 N.C. App. 460, 621 S.E.2d 1, 2005 N.C. App. LEXIS 2352 (2005).

Trial court properly denied summary judgment to a sheriff and two detention center officers with regard to a former inmate's suit asserting a violation of her state and federal constitutional rights with regard to allegedly having been denied medical treatment for appendicitis while incarcerated at a county detention center. The sheriff and the officers were "persons" amendable to suit under 42 U.S.C.S.

§ 1983 and were not immune since the indifference shown, despite the inmate's repeated complaints of pain, was not protected by qualified immunity. Boyd v. Robeson County, 169 N.C. App. 460, 621 S.E.2d 1, 2005 N.C. App. LEXIS 2352 (2005).

ARTICLE IX

EDUCATION

Section 1. Education encouraged.

CASE NOTES

Applied in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

Sec. 2. Uniform system of schools.

CASE NOTES

Applied in Ripellino v. N.C. Sch. Bds. Ass'n, — N.C. App. —, 627 S.E.2d 225, 2006 N.C. App. LEXIS 537 (2006).

Cited in Durham Land Owners Ass'n v. County of Durham, — N.C. App. —, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

Sec. 7. County school fund; State fund for certain moneys.

CASE NOTES

Penalties Collected for Failing to Comply with Statutory or Regulatory Tax Provisions. — Monetary payments for a taxpayer's noncompliance with a mandate of Chapter 105 are penalties and, therefore, subject to N.C. Const. art. IX, § 7; thus, monies collected by the North Carolina Department of Revenue for late filings, underpayments, and for failing to comply with statutory or regulatory tax provisions are payable to public schools. N.C. Sch. Bds. Ass'n v. Moore, 359 N.C. 474, 614 S.E.2d 504, 2005 N.C. LEXIS 694 (2005).

Civil penalties paid by public school systems to state agencies must be remitted to Civil Penalty Fund for return to all of the public schools in the manner dictated by G.S. 115C-457.3. N.C. Sch. Bds. Ass'n v. Moore, 359 N.C. 474, 614 S.E.2d 504, 2005 N.C. LEXIS 694 (2005).

Monies Received for Excise Tax Versus Penalties and Interest Payments. — Excise tax on unauthorized substances is not a penalty subject to the provisions of N.C. Const. art. IX, § 7 and is, therefore, not payable to public schools; however, the penalties and interest payments collected by the Department of Revenue for enforcement of the excise tax are classified as penalties to be disbursed to public school systems, pursuant to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 359 N.C. 474, 614 S.E.2d 504, 2005 N.C. LEXIS 694 (2005).

Allocation of Funds From a City's Red Light Camera Ordinance. — County board of education was entitled to funds derived from a city's red light camera program, which program was implemented by an ordinance pursuant to G.S. 160A-300.1(c), as N.C. Const. art. IX, § 7 applied to the civil penalties assessed by the city for violations of the ordinance regarding the failure to stop for a red stoplight. Further, pursuant to G.S. 115C-437, the city was to pay 90 percent of the amount collected by its red light camera program to the board. Shavitz v. City of High Point, — N.C. App. —, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006).

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Sec. 2. Homestead exemptions.

CASE NOTES

I. Homestead Exemption Generally.

I. HOMESTEAD EXEMPTION GENERALLY.

Involuntary Absence Did Not Constitute Abandonment of Residence. — Claimed homestead exemption was allowed, pursuant to G.S. 1C-1601(a)(1), over a trustee's objection because the debtor was forced to vacate and did not voluntarily abandon her damaged home as a result of hurricanes and she paid property taxes, stored personalty there, lived in temporary housing, and intended to use the home as a residence as soon as repairs were practicable. In re Foster, 348 B.R. 58, 2006 Bankr. LEXIS 1833 (Bankr. E.D.N.C. 2006).

Sec. 3. Mechanics' and laborers' liens.

CASE NOTES

Adequate Lien for Subcontractors and Suppliers of Materials and Labor. — Appellate court erred in reversing the trial court's grant of summary judgment to the product supplier that found the product supplier was entitled to judgment in the amount specified in its notice of lien sent to the manufacturer; the state constitution and statutory law provided that a materialman was entitled to an adequate lien on the subject matter of the materials supplied, the product supplier sent a notice of lien for a certain amount to the manufacturer after the product supplier became aware that the contractor with whom the manufacturer had contracted was having financial difficulties, and the manufacturer nevertheless paid the contractor, instead of the product supplier, shortly before the contractor went bankrupt. O & M Indus. v. Smith Eng'g Co., 360 N.C. 263, 624 S.E.2d 345, 2006 N.C. LEXIS 6 (2006).

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. Punishments.

CASE NOTES

No Contact With Victims. — Sentence provision which precluded defendant from having any contact with the victims did not violate N.C. Const. art. XI, § 1, as the no contact recommendation was not a mandatory and binding part of the judgment, but rather, much like an order of restitution; furthermore, it constituted a recommendation to the Secretary of the Department of Correction and the Parole Commission, not an order binding defendant upon entry of the judgment, as neither the Parole Commission nor the Department of Correction was bound by the judge's recommendation. State v. Curmon, 171 N.C. App. 697, 615 S.E.2d 417, 2005 N.C. App. LEXIS 1362 (2005).

ARTICLE XIV

MISCELLANEOUS

Sec. 5. Conservation of natural resources.

CASE NOTES

Cited in Parker v. New Hanover County, 173 N.C. App. 644, 619 S.E.2d 868, 2005 N.C. App. LEXIS 2227 (2005).

TABLES OF LAWS CODIFIED SUBSEQUENT TO 1919

This table indicates the original codification of Session Laws in the General Statutes of North Carolina. This table does not reflect the repeal or renumbering of sections of the General Statutes since the original codification of a particular Session Law or section thereof.

SESSION LAWS OF 2006

Ch.	Sec.	General Statutes
3	1	66-58 L.M., 143-299.3 L.M.
4	1	122C-410 L.M.
5	1	115D-15 L.M., 160A-265 L.M., 160A-272 L.M.
6	1	14-306.1
	2	14-306.1
	3	14-306.1 Repealed
	4	14-306.1A
	5	14-306.2
	6	147-12
	7	14-306.1
	8	14-306.1
	9	14-306.1
	10	105-256
	11	14-309
7	1	135-40 L.M., 135-40.1 L.M., 135-40.2 L.M., 135-40.3 L.M.
8	1	66-58 L.M., 143-299.3 L.M.
9	2	18B-700 L.M.
11	1	25-9-705
	2	25-9-705 note
13	1	115C-366.1 L.M.
15	1	160A-303 L.M., 160A-303.2 L.M.
16	1	161-31
17	1	105-131.2
	2	105-134.6
	3	105-134.6
18	1	105-228.90
	2	105-228.90 note
	3	105-32.8
	4	105-130.20
	5	105-159
	6	105-197.1
	7	105-130.17
	8	105-155
	9	105-151.11
19	1	105-164.13
	2	105-187.53
	3	105-164.13 note, 105-187.53 note
21	2	113-133.1 L.M.
23	1	115C-12 L.M.
24	1	131E-18 L.M., 131E-23 L.M.
	2	131E-18 L.M., 131E-23 L.M.
	3	131E-18 L.M., 131E-23 L.M.
26	1	97-19.1
27	2	20-50 L.M., 20-54 L.M.
28	2	20-162.1 L.M.
29	1	128-26
30	1	105-304
	2	105-307
	3	105-330.10
	4	105-277.4
	5	105-321
	6	105-378
	7	105-373
31	1	115D-2.1
32	1	120-244
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This table lists the sections of the General Statutes of North Carolina which were added, amended or repealed during the 2006 legislative session of the General Assembly.

In instances where the effective date of an act has been postponed beyond January 1, 2007, the effective date of such act is indicated in the right-hand column.

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7A-38.6	Amended	203	10	7/1/07
7A-39	Amended	187	6	
7A-41	Amended	96	2	
7A-49.5	Added	187	2	
7A-60	Amended	66	14.3	
7A-60	Amended	66	14.19	1/15/07
7A-101	Amended	66	22.5	
7A-102	Amended	66	22.6	
7A-109.2	Amended	253	20.1	
7A-109.4	Added	253	24	
7A-132	Amended	187	7	
7A-133	Amended	66	14.4	1/15/07
7A-133	Amended	66	14.5	
7A-133	Amended	96	1	
7A-133	Amended	187	7	
7A-133	Amended	221	14	
7A-133	Amended	264	93	
7A-171	Amended	187	7	
7A-171.1	Amended	66	22.7	
7A-177	Amended	264	29	
7A-312	Amended	66	14.17	
7A-314	Amended	187	5	
7A-321	Added	187	1	
7A-343	Amended	187	1	
7A-343	Amended	187	2	
7A-343	Amended	187	5	
7A-343.2	Amended	187	2	
7A-346.3	Added	253	20.2	
7A-349	Added	187	3	
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7A-374.1	Added	187	11	
7A-374.2	Added	187	11	
7A-375	Amended	187	11	
7A-376	Amended	187	11	
7A-377	Amended	187	11	
7A-378	Amended	187	11	
7A-409.1	Amended	184	10	
7A-413	Amended	264	29	

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7A-806	Amended	66	14.20	1/15/07
7A-806	Amended	221	15	
7B-202	Added	187	4	
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7B-3100	Amended	205	2	
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8C-1-103	Amended	264	30.5	
8C-1-702	Amended	253	6	
9-10	Amended	226	8	
9-10	Amended	264	30	
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10B-5	Amended	59	2	
10B-7	Amended	59	3	
10B-10	Amended	59	4	
10B-11	Amended	59	5	
10B-20	Amended	59	6	
10B-20	Amended	59	7	
10B-20	Amended	59	8	
10B-20	Amended	59	9	
10B-20	Amended	59	10	
10B-20	Amended	59	11	
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14-32.1	Amended	179	1	
14-39	Amended	247	20	
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14-43.11	Added	247	20	
14-43.12	Added	247	20	
14-43.13	Added	247	20	
14-72	Amended	259	4	
14-112.2	Amended	264	99	
14-208.6	Amended	247	1	
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14-208.6A	Amended	247	2	

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14-208.8A	Added	247	4	6/1/07
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14-208.9A	Amended	247	7	
14-208.11	Amended	247	8	6/1/07
14-208.11	Amended	247	8	
14-208.11A	Added	247	9.1	
14-208.12A	Amended	247	10	
14-208.16	Added	247	11	
14-208.17	Added	247	11	
14-208.28	Amended	247	13	
14-208.40	Added	247	15	
14-208.41	Added	247	15	
14-208.42	Added	247	15	
14-208.43	Added	247	15	
14-208.44	Added	247	15	
14-208.45	Added	247	15	
14-226	Amended	264	2	
14-226.2	Added	181	3	
14-234	Amended	78	2	
14-269	Amended	259	5	
14-269.2	Amended	264	31	
14-288.4	Amended	169	1	
14-306.1	Amended	6	1	
14-306.1	Amended	6	2	3/1/07
14-306.1	Amended	6	7	
14-306.1	Amended	6	8	
14-306.1	Amended	6	9	
14-306.1A	Amended	259	6	
14-306.1A	Added	6	4	7/1/07
14-306.2	Amended	6	5	7/1/07
14-309	Amended	6	11	7/1/07
14-309.15	Amended	264	3	
14-362.2	Amended	113	3.1	
14-362.2	Amended	259	37	
14-404	Amended	39	1	
14-404	Amended	264	4	
14-407.1	Amended	264	5	
14-409.11	Amended	259	7	
14-415.1	Amended	259	7	
14-415.13	Amended	39	2	
15A-544.7	Amended	188	2	
15A-615	Amended	226	10	
15A-615	Amended	264	33	
15A-830	Amended	247	20	
15A-1341	Amended	247	14	
15A-1343	Amended	247	15	
15A-1343.2	Amended	247	15	
15A-1344	Amended	247	15	
15A-1368.2	Amended	247	15	
15A-1368.4	Amended	247	15	
15A-1371	Amended	264	34	
15A-1374	Amended	247	15	
15A-1374	Amended	253	27	
15A-1401	Amended	184	2	
15A-1411	Amended	184	4	
15A-1417	Amended	184	3	
15A-1418	Amended	184	5	

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15A-1420	Amended	253	30	
15A-1460	Added	184	1	
15A-1461	Added	184	1	
15A-1462	Added	184	1	
15A-1463	Added	184	1	
15A-1464	Added	184	1	
15A-1465	Added	184	1	
15A-1466	Added	184	1	
15A-1467	Added	184	1	
15A-1468	Added	184	1	
15A-1469	Added	184	1	
15A-1470	Added	184	1	
15A-1475	Added	184	9	
15B-2	Amended	183	1	
15B-2	Amended	183	2	
15B-4	Amended	183	3	
15B-11	Amended	183	4	
15B-11	Amended	183	5	
17C-3	Amended	264	29	
17D-4	Amended	203	12	7/1/07
17E-3	Amended	264	29	
18B-101	Amended	253	2	
18B-101	Amended	264	95	
18B-108	Amended	227	8	
18B-203	Amended	227	10	
18B-208	Amended	203	13	7/1/07
18B-302	Amended	253	26	
18B-303	Amended	253	3.2	
18B-307	Amended	222	2.2	
18B-307	Amended	227	2	
18B-403.1	Added	253	3.1	
18B-500	Amended	264	35	
18B-902	Amended	222	2.3	
18B-902	Amended	227	3	
18B-1001	Amended	222	2.1	
18B-1001	Amended	227	1	
18B-1001	Amended	227	9	
18B-1001	Amended	264	35.3	
18B-1001.1	Amended	227	4	
18B-1001.2	Amended	227	5	
18B-1001.3	Added	227	6	
18B-1003	Amended	253	28	
18B-1006	Amended	227	7	
18B-1006	Amended	264	100	
18B-1106	Amended	227	11	
18B-1107	Amended	227	12	
18B-1114	Amended	227	13	
18C-111	Amended	259	8	
18C-115	Amended	225	2	
18C-130	Amended	259	8	
18C-131	Amended	259	8	
18C-132	Amended	225	4	
18C-151	Amended	259	8	
18C-164	Amended	259	8	
18C-172	Added	225	1	
19A-3	Amended	113	1.1	
19A-4	Amended	113	1.2	
19A-64	Amended	252	2.11	1/2/07
19A-70	Amended	113	2.1	

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20-4.01	Amended	253	8	
20-7	Amended	257	1	
20-7	Amended	257	2	7/1/08
20-7	Amended	264	35.2	
20-9	Amended	247	19	
20-9.3	Added	247	19	
20-11	Amended	177	2	
20-11	Amended	177	3	
20-11	Amended	177	4	
20-11	Amended	177	5	
20-11	Amended	177	6	
20-11	Amended	177	7	
20-16.2	Amended	253	15	
20-16.3	Amended	253	7	
20-16.3A	Amended	253	4	
20-17	Amended	253	22.2	
20-17.2	Repealed	253	25	
20-17.8	Amended	253	22.3	
20-17.8	Amended	253	22.4	
20-28	Amended	253	22.1	
20-28.2	Amended	253	31	
20-28.3	Amended	253	32	
20-37.7	Amended	247	19	
20-37.20	Amended	209	7	
20-38.1	Added	253	5	
20-38.2	Added	253	5	
20-38.3	Added	253	5	
20-38.4	Added	253	5	
20-38.5	Added	253	5	
20-38.6	Added	253	5	
20-38.7	Added	253	5	
20-45	Amended	105	2.1	
20-45	Amended	105	2.2	
20-45	Amended	264	98.1	
20-48	Amended	253	21	
20-50.3	Amended	259	31.5	
20-50.4	Amended	259	31.5	
20-51	Amended	135	2	
20-63	Amended	209	1	
20-63	Amended	213	4	7/1/08
20-79.4	Amended	209	2	
20-79.5	Amended	203	14	7/1/07
20-79.7	Amended	209	3	
20-79.7	Amended	209	4	
20-81.12	Amended	209	5	
20-81.12	Amended	209	6	
20-85	Amended	255	5	
20-85	Amended	264	35.5	
20-114.3	Amended	264	36	
20-114.3	Added	116	2	
20-114.3	Added	166	1	
20-118	Amended	135	1	
20-118	Amended	264	37	
20-135.2A	Amended	66	21.11	
20-135.2A	Amended	221	21	
20-135.2A	Amended	140	1	
20-137.3	Added	177	1	
20-138.1	Amended	253	9	
20-138.2	Amended	253	10	

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20-138.3	Amended	253	11	
20-138.4	Amended	253	19	
20-138.5	Amended	253	12	
20-138.5	Amended	253	13	
20-139.1	Amended	253	16	
20-141.4	Amended	253	14	
20-157	Amended	259	9	
20-158	Amended	264	6	
20-171.19	Amended	259	10	
20-175	Amended	250	7	
20-179	Amended	253	23	
20-183.2	Amended	255	1	
20-183.7	Amended	230	2	7/1/07
20-183.9	Amended	66	21.8	
20-189	Amended	203	15	7/1/07
20-217	Amended	160	1	
20-217	Amended	259	11	
20-279.33A	Added	145	5	
20-288	Amended	105	2.3	
20-288	Amended	191	1	
20-288	Amended	259	12	
20-309	Amended	213	5	7/1/08
20-309	Amended	264	38	
20-309.2	Added	213	1	7/1/08
20-311	Amended	213	2	7/1/08
20-312	Repealed	213	5	7/1/08
20-316	Amended	213	3	7/1/08
20-316.1	Repealed	213	5	7/1/08
25-1-101	Amended	112	1	
25-1-102	Amended	112	1	
25-1-103	Amended	112	1	
25-1-104	Amended	112	1	
25-1-105	Amended	112	1	
25-1-106	Amended	112	1	
25-1-107	Amended	112	1	
25-1-108	Amended	112	1	
25-1-109	Repealed	112	1	
25-1-201	Amended	112	1	
25-1-201	Amended	112	1	
25-1-201	Amended	112	26	
25-1-202	Amended	112	1	
25-1-203	Amended	112	1	
25-1-204	Amended	112	1	
25-1-205	Amended	112	1	
25-1-206	Amended	112	1	
25-1-301	Amended	112	1	
25-1-302	Amended	112	1	
25-1-303	Amended	112	1	
25-1-304	Amended	112	1	
25-1-305	Amended	112	1	
25-1-306	Amended	112	1	
25-1-307	Amended	112	1	
25-1-308	Amended	112	1	
25-1-309	Amended	112	1	
25-1-310	Amended	112	1	
25-2-103	Amended	112	2	
25-2-103	Amended	112	27	
25-2-104	Amended	112	28	
25-2-202	Amended	112	3	

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25-2-208	Repealed	112	4	
25-2-310	Amended	112	29	
25-2-323	Amended	112	30	
25-2-401	Amended	112	31	
25-2-503	Amended	112	32	
25-2-505	Amended	112	33	
25-2-506	Amended	112	34	
25-2-509	Amended	112	35	
25-2-605	Amended	112	36	
25-2-705	Amended	112	37	
25-2A-103	Amended	112	5	
25-2A-103	Amended	112	38	
25-2A-207	Repealed	112	6	
25-2A-501	Amended	112	7	
25-2A-514	Amended	112	39	
25-2A-518	Amended	112	8	
25-2A-519	Amended	112	9	
25-2A-526	Amended	112	40	
25-2A-527	Amended	112	10	
25-2A-528	Amended	112	11	
25-3-103	Amended	112	12	
25-3-103	Amended	112	13	
25-4-104	Amended	112	14	
25-4-104	Amended	112	41	
25-4-208	Amended	112	42	
25-4A-105	Amended	112	15	
25-4A-105	Amended	112	16	
25-4A-106	Amended	112	17	
25-4A-204	Amended	112	18	
25-5-103	Amended	112	19	
25-7-101	Amended	112	25	
25-7-101	Amended	112	25	
25-7-101	Amended	112	25	
25-7-103	Amended	112	25	
25-7-104	Amended	112	25	
25-7-105	Amended	112	25	
25-7-106	Added	112	25	
25-7-201	Amended	112	25	
25-7-201	Amended	112	25	
25-7-202	Amended	112	25	
25-7-203	Amended	112	25	
25-7-204	Amended	112	25	
25-7-205	Amended	112	25	
25-7-206	Amended	112	25	
25-7-207	Amended	112	25	
25-7-208	Amended	112	25	
25-7-209	Amended	112	25	
25-7-210	Amended	112	25	
25-7-301	Amended	112	25	
25-7-302	Amended	112	25	
25-7-303	Amended	112	25	
25-7-304	Amended	112	25	
25-7-305	Amended	112	25	
25-7-306	Amended	112	25	
25-7-307	Amended	112	25	
25-7-308	Amended	112	25	
25-7-309	Amended	112	25	
25-7-401	Amended	112	25	
25-7-402	Amended	112	25	

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25-7-404	Amended	112	25	
25-7-501	Amended	112	25	
25-7-502	Amended	112	25	
25-7-503	Amended	112	25	
25-7-504	Amended	112	25	
25-7-505	Amended	112	25	
25-7-506	Amended	112	25	
25-7-507	Amended	112	25	
25-7-508	Amended	112	25	
25-7-509	Amended	112	25	
25-7-601	Amended	112	25	
25-7-602	Amended	112	25	
25-7-603	Amended	112	25	
25-8-102	Amended	112	20	
25-8-103	Amended	112	43	
25-9-102	Amended	112	21	
25-9-102	Amended	112	44	
25-9-203	Amended	112	45	
25-9-207	Amended	112	46	
25-9-208	Amended	112	47	
25-9-301	Amended	112	48	
25-9-310	Amended	112	49	
25-9-312	Amended	112	50	
25-9-313	Amended	112	51	
25-9-314	Amended	112	52	
25-9-317	Amended	112	53	
25-9-338	Amended	112	54	
25-9-601	Amended	112	55	
25-9-705	Amended	11	1	
25-10-104	Repealed	112	56	
27-54	Repealed	112	58	
27-55	Repealed	112	58	
27-56	Repealed	112	58	
27-57	Repealed	112	58	
27-58	Repealed	112	58	
27-59	Repealed	112	58	
28A-18-2	Amended	264	66	
31A-3	Amended	107	1	
31A-12.1	Added	107	2	
32-55	Amended	259	13	
32-57	Amended	259	13	
32-71	Amended	259	13	
32A-20	Amended	226	32	
32A-25	Amended	226	32	
32A-42	Amended	264	39	
36C-2-206	Amended	259	13	
36C-4-408	Amended	259	13	
36C-4-410	Amended	259	13	
36C-4-411	Amended	259	13	
36C-4-412	Amended	259	13	
36C-4-414	Amended	259	13	
36C-4-416	Amended	259	13	
36C-4-417	Amended	259	13	
36C-4-419	Amended	259	13	
36C-7-701	Amended	259	13	
36C-8-815	Amended	259	13	
36C-11-1106	Amended	226	31	
37A-2-202	Amended	259	13	

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39-25	Repealed	226	2	
39-26	Repealed	226	2	
39-27	Repealed	226	2	
39-60	Added	106	7	
40A-1	Amended	224	1	
40A-1	Amended	259	47	
40A-3	Amended	224	2	
40A-3	Amended	259	47	
41-47	Amended	226	11	
44A-2	Amended	222	1.2	
44A-43	Amended	264	38.5	
44A-50	Added	222	1.1	
44A-55	Added	222	1.1	
44A-60	Added	222	1.1	
44A-65	Added	222	1.1	
44A-70	Added	222	1.1	
44A-75	Added	222	1.1	
44A-80	Added	222	1.1	
44A-85	Added	222	1.1	
44A-90	Added	222	1.1	
45-36.6	Amended	264	40	
45-37	Amended	226	12	
45-37	Amended	259	2	
45-37	Amended	264	40	
45-38	Amended	226	13	
47-14	Amended	59	26	
47-14	Amended	259	52	
47-14	Amended	264	40	
47-29.1	Amended	246	16	
47-37.1	Amended	59	27	
47-38	Amended	59	28	
47-41.01	Amended	59	29	
47-41.02	Amended	59	30	
47-41.2	Amended	199	3	
47-41.2	Added	59	31	
47-46.1	Amended	264	82	
47-46.2	Amended	226	27	
47-46.2	Amended	264	82	
47C-3-101	Amended	226	4	
47C-3-116	Amended	226	14	
47C-3-121	Amended	226	14	
47F-1-102	Amended	226	15	
47F-3-121	Amended	226	15	
50-13.9	Amended	264	97	
50C-8	Amended	264	41	
53B-2	Amended	259	14	
53B-4	Amended	259	14	
53-92	Amended	203	16	7/1/07
53-163.5	Amended	259	13	
53-166	Amended	243	2	
53-243.05	Amended	239	1	
53-243.06	Amended	239	2	
53-243.17	Added	239	3	
53-243.18	Added	239	3	
53-245	Amended	66	6.19	
53-245	Amended	203	17	7/1/07
53-245	Amended	259	40	

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53-345 =c2Amended		221	3A	
55A-11-04	Amended	264	44	
55A-11-05	Amended	264	44	
55A-11-06	Amended	226	16	
55A-11-06	Amended	264	44	
55B-14	Amended	144	3.1	
55-8-03	Amended	264	44	
55-11-04	Amended	226	16	
55-11-05	Amended	226	16	
55-11-05	Amended	259	14.5	
55-11-05	Amended	264	44	
55-11-06	Amended	264	44	
57C-9A-02	Amended	226	16	
57C-9A-02	Amended	264	44	
58-2-25	Amended	145	4	
58-2-46	Added	145	3	
58-2-47	Added	145	3	
58-2-150	Amended	105	1.1	
58-2-240	Amended	105	2.4	
58-2-245	Added	105	2.5	
58-3-191	Amended	154	13	
58-7-1	Amended	105	1.2	
58-7-26	Amended	105	1.3	
58-7-130	Amended	105	3.1	
58-19-25	Amended	105	3.2	
58-19-30	Amended	105	3.3	
58-19-30	Amended	105	3.4	
58-21-35	Amended	105	2.6	
58-21-45	Amended	105	2.7	
58-30-125	Amended	105	1.4	
58-30-180	Amended	105	1.5	
58-31-66	Amended	264	7	
58-33-95	Amended	105	2.8	
58-36-4	Amended	264	45	
58-36-95	Amended	105	1.6	
58-37-35	Amended	105	1.7	
58-37-35	Amended	264	83	
58-40-50	Amended	264	45	
58-44-1	Amended	145	1	
58-44-60	Added	145	2	
58-44-70	Added	145	1	
58-44-75	Added	145	1	
58-44-80	Added	145	1	
58-44-85	Added	145	1	
58-44-90	Added	145	1	
58-44-95	Added	145	1	
58-44-100	Added	145	1	
58-44-105	Added	145	1	
58-44-110	Added	145	1	
58-44-115	Added	145	1	
58-44-120	Added	145	1	
58-47-140	Amended	226	17	
58-50-40	Amended	105	1.8	
58-50-46	Amended	221	9	
58-50-46	Added	66	10.8	
58-50-100	Amended	105	1.9	
58-50-110	Amended	154	5	
58-50-110	Amended	154	6	

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58-50-120	Repealed	154	9	
58-50-125	Amended	154	1	
58-50-125	Amended	154	2	
58-50-125	Amended	154	9	
58-50-125	Amended	154	10	
58-50-125	Amended	154	14	
58-50-126	Added	154	3	
58-50-130	Amended	154	7	
58-50-135	Amended	154	9	
58-50-135	Amended	154	11	
58-50-140	Repealed	154	9	
58-50-145	Repealed	154	9	
58-50-149	Amended	154	8	
58-50-150	Amended	154	12	
58-58-145	Amended	105	2.9	
58-68-40	Amended	154	4	
58-70-5	Amended	134	1	
58-70-40	Amended	134	2	
58-70-65	Amended	134	3	
58-71-140	Amended	188	1	
58-84-25	Amended	196	7	1/1/08
58-86-55	Amended	66	22.19	
58-87-1	Amended	196	8	1/1/08
59B-1	Added	226	1	
59B-2	Added	226	1	
59B-3	Added	226	1	
59B-4	Added	226	1	
59B-5	Added	226	1	
59B-6	Added	226	1	
59B-7	Added	226	1	
59B-8	Added	226	1	
59B-9	Added	226	1	
59B-10	Added	226	1	
59B-11	Added	226	1	
59B-12	Added	226	1	
59B-13	Added	226	1	
59B-14	Added	226	1	
59B-15	Amended	226	2	
59B-15	Added	226	2	
62-182.1	Amended	259	15	
62-212	Amended	264	45.5	
62-302	Amended	203	18	7/1/07
62A-22	Amended	66	6.19	
62A-22	Amended	203	19	7/1/07
62A-22	Amended	221	3A	
62A-22	Amended	259	40	
66-58	Amended	66	9.11	7/1/07
66-58	Amended	264	8	
66-181	Amended	112	22	
66-313	Amended	112	23	
66-326	Amended	112	24	
66-341	Amended	264	99.5	
66-342	Amended	264	99.5	
66-343	Amended	264	99.5	
66-344	Amended	264	99.5	
66-345	Amended	264	99.5	
66-346	Amended	264	99.5	
66-350	Added	151	1	
66-351	Added	151	1	

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66-352	Added	151	1	
66-353	Added	151	1	
66-354	Added	151	1	
66-355	Added	151	1	
66-356	Amended	151	18	
66-356	Added	151	1	
66-357	Added	151	1	
66-358	Added	151	1	
66-359	Added	151	1	
66-360	Added	151	1	
71A-5	Amended	111	1	
74-24.6	Amended	203	20	7/1/07
74-24.16	Amended	66	13.1	
74C-3	Amended	264	46	
74E-6	Amended	259	5	
75-38	Amended	245	1	
75-38	Amended	259	41	
75-63	Amended	158	1	
75-115	Added	207	1	
75-116	Added	207	1	
75-117	Added	207	1	
75-118	Added	207	1	
75A-1	Amended	185	1	
75A-2	Amended	185	1	
75A-3	Amended	185	1	
75A-4	Amended	185	1	
75A-5	Amended	185	1	
75A-5.1	Amended	185	1	
75A-5.2	Added	185	1	
75A-6	Amended	185	1	
75A-6.1	Amended	185	1	
75A-7	Amended	185	1	
75A-8	Amended	185	1	
75A-9	Amended	185	1	
75A-9.1	Repealed	185	1	
75A-10	Amended	185	1	
75A-10.2	Amended	185	1	
75A-11	Amended	185	1	
75A-12	Amended	185	1	
75A-13	Amended	185	1	
75A-13.1	Amended	185	1	
75A-13.3	Amended	185	1	
75A-14.1	Amended	185	1	
75A-15	Amended	185	1	
75A-16.1	Added	185	1	
75A-17	Amended	185	1	
75A-18	Amended	185	1	
75A-19	Amended	185	1	
75A-32	Amended	185	2	
75A-32	Amended	185	2	
75A-33	Amended	185	2	
75A-34	Amended	185	2	
75A-35	Amended	185	2	
75A-36	Amended	185	2	
75A-37	Amended	185	2	
75A-38	Amended	185	2	
75A-39	Amended	185	2	
75A-40	Amended	185	2	
75A-41	Amended	185	2	

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75A-42	Amended	185	2	
75A-43	Amended	185	2	
75A-44	Amended	185	2	
75A-45	Amended	185	2	
75A-46	Amended	185	2	
75A-47	Amended	185	2	
75A-48	Amended	185	2	
75A-49	Amended	185	2	
84-20	Amended	66	22.23	
84-20	Amended	221	24	
87-1.1	Amended	241	2	
87-1.1	Amended	259	43	
87-1.1	Amended	261	3	
87-1.2	Added	261	2	
87-10	Amended	241	1	
87-85	Amended	202	1	
87-87	Amended	202	2	
87-88	Amended	202	3	
87-88	Amended	259	50	
87-97	Amended	259	50	
87-97	Amended	259	51	
87-97	Added	202	4	
87-98	Added	255	5.2	
88B-2	Amended	212	1	
88B-9	Amended	212	3	
88B-11	Amended	212	5	
88B-18	Amended	212	2	
88B-21	Amended	212	6	
88B-22	Amended	212	4	
90-14	Amended	144	4	
90-14.5	Amended	144	5	
90-14.13	Amended	144	6	
90-16	Amended	144	7	
90-21.20B	Added	253	17	
90-21.22	Amended	144	8	
90-29.4	Amended	41	1	
90-85.46	Amended	259	16	
90-85.47	Amended	259	16	
90-113.52	Amended	186	1	
90-113.53	Amended	186	2	
90-113.54	Amended	186	3	
90-113.61	Added	186	4	
90-171.21	Amended	264	47	
90-171.61	Amended	66	9.9	
90-171.100	Added	66	9.6	
90-171.101	Added	66	9.6	
90-223	Amended	235	1	
90-224	Amended	235	2	
90-232	Amended	235	3	
90-270.4	Amended	175	1	
90-270.22	Added	175	2	
90-270.26	Amended	144	1	
90-270.32	Amended	144	2	
90-270.67	Amended	226	18	
90A-70	Added	82	1	
90A-70	Added	82	1	
90A-71	Added	82	1	
90A-72	Added	82	1	1/1/08
90A-73	Added	82	1	

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90A-74	Added	82	1	
90A-75	Added	82	1	
90A-76	Added	82	1	
90A-77	Added	82	1	
90A-78	Added	82	1	
90A-79	Added	82	1	1/1/08
90A-80	Added	82	1	
90A-81	Added	82	1	1/1/08
90B-9	Amended	226	19	
93B-2	Amended	70	1	
93E-1-7	Amended	259	17	
95-25.3	Amended	114	1	
95-25.3	Amended	259	18	
95-97	Amended	264	50	
95-135	Amended	203	21	7/1/07
95-138	Amended	39	3	
95-232	Amended	264	52	
95-256	Amended	226	30	
95-265	Amended	264	9	
96-5	Amended	203	22	7/1/07
96-6	Amended	66	6.19	
96-6	Amended	203	23	7/1/07
96-6	Amended	259	40	
96-6.1	Amended	203	24	7/1/07
96-9	Amended	251	1	
96-15	Amended	242	1	
97-7	Amended	105	1.10	
97-18	Amended	264	91.7	
97-19.1	Amended	26	1	
97-19.1	Amended	259	19	
105-32.2	Amended	162	26	
105-32.8	Amended	18	3	
105-40	Amended	216	1	
105-113.81A	Amended	227	14	7/1/07
105-113.81A	Amended	264	98.3	
105-113.82	Amended	162	1	
105-114	Amended	66	24A.2	
105-114	Amended	162	3	
105-114	Amended	162	22	
105-114.1	Amended	66	24A.2	
105-116	Amended	33	10	
105-116	Amended	162	31	
105-120.2	Amended	196	9	
105-122	Amended	95	1.1	
105-122	Amended	162	2	
105-122.1	Added	66	24A.2	
105-129.2	Amended	66	24.16	
105-129.2A	Amended	168	2.1	
105-129.2A	Amended	252	1.3	
105-129.3A	Amended	66	24.5	
105-129.3B	Added	66	24.16	
105-129.4	Amended	66	24.14	
105-129.6	Amended	66	24.16	
105-129.7	Amended	66	24.16	
105-129.8	Amended	66	24.16	
105-129.9	Amended	66	24.16	
105-129.15	Amended	162	23	
105-129.16D	Amended	66	24.7	
105-129.16D	Amended	259	19.5	

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105-129.16E	Added	66	24.4	
105-129.16F	Added	66	24.8	1/1/08
105-129.35	Amended	40	2	
105-129.36	Amended	40	3	
105-129.36	Amended	40	4	
105-129.51	Amended	252	2.20	
105-129.55	Amended	252	2.1	
105-129.70	Amended	252	2.22	
105-129.70	Added	40	1	
105-129.71	Amended	252	2.23	
105-129.71	Amended	259	47.5	
105-129.71	Added	40	1	
105-129.72	Amended	252	2.24	
105-129.72	Added	40	1	
105-129.73	Added	40	1	
105-129.74	Added	40	1	
105-129.75	Added	40	1	
105-129.80	Added	252	1.1	
105-129.81	Added	252	1.1	
105-129.82	Added	252	1.1	
105-129.83	Added	252	1.1	
105-129.84	Added	252	1.1	
105-129.85	Added	252	1.1	
105-129.86	Added	252	1.1	
105-129.87	Added	252	1.1	
105-129.88	Added	252	1.1	
105-129.89	Added	252	1.1	
105-130.2	Amended	162	3	
105-130.5	Amended	220	1	
105-130.7A	Amended	66	24A.3	
105-130.7A	Amended	196	10	
105-130.9	Amended	66	24.18	
105-130.17	Amended	18	7	
105-130.20	Amended	18	4	
105-130.47	Amended	162	4	
105-130.47	Amended	220	2	
105-130.48	Added	66	24.18	
105-131.2	Amended	17	1	
105-134	Amended	259	8	
105-134	Amended	264	91	
105-134.2	Amended	66	24.2	
105-134.2	Amended	66	24.2	
105-134.2	Amended	66	24.2	1/1/08
105-134.6	Amended	17	2	
105-134.6	Amended	17	3	
105-134.6	Amended	66	24.12	
105-134.6	Amended	66	24.18	
105-134.6	Amended	220	3	
105-134.6	Amended	221	27	
105-151.11	Amended	18	9	
105-151.12	Amended	66	24.15	
105-151.26	Amended	66	24.18	
105-151.29	Amended	162	4	
105-151.29	Amended	220	4	
105-151.30	Added	66	24.18	
105-152	Amended	66	24.11	
105-155	Amended	18	8	
105-159	Amended	18	5	
105-159.2	Amended	192	18	

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105-160.3	Amended	66	24.18	
105-163.2B	Amended	259	8	
105-163.2B	Amended	264	91	
105-164.3	Amended	33	1	
105-164.3	Amended	66	24.10	7/1/07
105-164.3	Amended	66	24.17	
105-164.3	Amended	151	2	
105-164.3	Amended	162	5	
105-164.3	Amended	168	4.1	
105-164.3	Amended	168	4.3	
105-164.3	Amended	252	2.25	
105-164.3	Amended	252	2.25	
105-164.3	Amended	252	2.25	
105-164.3	Amended	252	2.26	
105-164.4	Amended	33	2	
105-164.4	Amended	33	11	
105-164.4	Amended	66	24.1	7/1/07
105-164.4	Amended	66	24.1	
105-164.4	Amended	66	24.1	
105-164.4	Amended	66	24.19	7/1/07
105-164.4	Amended	151	3	
105-164.4B	Amended	33	3	
105-164.4B	Amended	66	24.13	
105-164.4C	Amended	33	4	
105-164.4C	Amended	151	4	
105-164.4D	Added	151	5	
105-164.6	Amended	162	6	
105-164.7	Amended	162	7	
105-164.12B	Amended	151	6	
105-164.13	Amended	19	1	
105-164.13	Amended	33	5	
105-164.13	Amended	66	24.17	
105-164.13	Amended	162	8	
105-164.13	Amended	168	4.2	
105-164.13	Amended	252	2.25	
105-164.14	Amended	33	6	
105-164.14	Amended	66	24.6	
105-164.14	Amended	66	24.10	7/1/07
105-164.14	Amended	66	24.13	
105-164.14	Amended	66	24A.1	
105-164.14	Amended	162	9	
105-164.14	Amended	162	27	
105-164.14	Amended	168	3.1	
105-164.14	Amended	252	2.2	
105-164.14	Amended	252	2.3	
105-164.15A	Amended	162	10	
105-164.16	Amended	33	9	10/1/07
105-164.16	Amended	162	5	
105-164.21B	Repealed	151	9	
105-164.27A	Amended	33	7	
105-164.42H	Amended	33	12	
105-164.44F	Amended	33	8	
105-164.44F	Amended	66	24.1	7/1/07
105-164.44F	Amended	66	24.1	
105-164.44F	Amended	151	7	
105-164.44I	Amended	66	24.1	
105-164.44I	Amended	66	24.1	
105-164.44I	Added	151	8	
105-187.43	Amended	33	13	10/1/07

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105-187.51B	Amended	66	24.9	7/1/07
105-187.51B	Amended	196	12	
105-187.52	Amended	162	11	
105-187.53	Added	19	2	
105-197.1	Amended	18	6	
105-228.5	Amended	196	1	
105-228.5	Amended	196	2	1/1/08
105-228.5	Amended	196	3	1/1/08
105-228.5	Amended	196	4	1/1/08
105-228.5	Amended	196	5	1/1/08
105-228.90	Amended	18	1	
105-233	Repealed	162	12	
105-234	Repealed	162	12	
105-236	Amended	162	12	
105-243.1	Amended	66	19.2	
105-243.1	Amended	66	19.3	
105-249.2	Amended	162	18	
105-256	Amended	6	10	7/1/07
105-256	Amended	66	19.3	
105-259	Amended	162	4	
105-259	Amended	196	11	
105-259	Amended	252	2.21	
105-273	Amended	106	1	
105-273	Amended	106	8	
105-277.4	Amended	30	4	
105-278	Amended	162	28	
105-304	Amended	30	1	
105-307	Amended	30	2	
105-321	Amended	30	5	
105-330	Amended	259	31.5	
105-330.2	Amended	259	31.5	
105-330.4	Amended	259	31.5	
105-330.5	Amended	259	31.5	
105-330.7	Amended	259	31.5	
105-330.10	Amended	30	3	
105-330.10	Amended	259	31.5	
105-369	Amended	106	2	
105-373	Amended	30	7	
105-374	Amended	106	3	
105-375	Amended	106	4	
105-375	Amended	106	5	
105-375	Amended	106	6	
105-378	Amended	30	6	
105-449.48	Repealed	162	12	
105-449.49	Amended	162	12	
105-449.60	Amended	162	14	
105-449.65	Amended	162	13	7/1/07
105-449.88A	Amended	162	14	
105-449.90	Amended	162	14	
105-449.93	Amended	162	14	
105-449.94	Repealed	162	14	
105-449.97	Amended	162	14	
105-449.100	Amended	162	15	
105-449.101	Amended	162	13	7/1/07
105-449.101	Amended	162	15	
105-449.102	Amended	162	15	
105-449.105A	Amended	162	14	
105-449.106	Amended	162	16	
105-449.107	Amended	162	16	

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105-449.120	Amended	162	17	
105-449.127	Repealed	162	12	
105-449.137	Amended	162	15	
105-467	Amended	66	7.20	
105-467	Amended	162	32	
105-501	Amended	264	29	
105A-2	Amended	259	20	
106-65.88	Amended	203	25	7/1/07
106-451.19	Amended	112	57	
106-452	Repealed	162	29	
106-557	Amended	264	24	
106-581.1	Amended	255	6	
106-744	Amended	252	2.12	
106-812	Added	139	1	
106-813	Added	139	1	
106-814	Added	139	1	
106-815	Added	139	2	
108A-54.1	Amended	66	10.9	
108A-54.2	Added	66	10.4	
108A-55.1	Amended	66	10.6	
108A-55.4	Amended	221	9	
108A-55.4	Added	66	10.8	
108A-55.4	Repealed	221	9	
108A-58	Repealed	66	10.5	
108A-58.1	Amended	221	8	
108A-58.1	Added	66	10.5	
108A-70.5	Amended	66	10.9B	
108A-70.6	Amended	66	10.9B	
108A-70.7	Amended	66	10.9B	
108A-70.8	Amended	66	10.9B	
108A-70.9	Amended	66	10.9B	
108A-88	Amended	203	26	7/1/07
110-93.1	Repealed	66	10.2	
113-133.1	Amended	226	20	
113-169.1	Amended	254	1	
113-174.2	Amended	79	1	
113-174.3	Amended	255	7	
113-174.3	Amended	259	20.5	
113-206	Amended	79	11	
113-258	Amended	203	27	7/1/07
113-270.3	Amended	226	21	
113-271	Amended	255	8	
113-272.3	Amended	255	9	
113-315.31	Amended	203	28	7/1/07
113-351	Amended	79	2	
113-351	Amended	255	10	
113A-4	Amended	264	29	
113A-54.1	Amended	250	1	
113A-56	Amended	250	2	
113A-57	Amended	255	2	
113A-57	Amended	264	53	
113A-60	Amended	250	3	
113A-126	Amended	229	1	
113A-193	Amended	203	29	7/1/07
113A-252	Amended	252	2.13	
113A-253.1	Amended	203	5	7/1/07
113A-254	Amended	178	1	
113A-255	Amended	178	2	
114-19.16	Amended	259	8	

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114-19.16	Amended	264	91	
114-19.18	Added	175	3	
114-19.19	Amended	259	42	
114-19.19	Added	187	3	
114-19.20	Amended	259	42	
115C-12	Amended	75	1	
115C-12	Amended	143	1	
115C-12	Amended	203	30	7/1/07
115C-12	Amended	260	1	
115C-47	Amended	137	1	
115C-47	Amended	143	2	
115C-50	Amended	264	29	
115C-81	Amended	69	3	
115C-81	Amended	264	54	
115C-84.2	Amended	264	25	
115C-105.25	Amended	69	3	
115C-105.26	Amended	153	2	
115C-105.27	Amended	153	1	
115C-106	Amended	203	31	7/1/07
115C-106	Repealed	69	1	
115C-106.1	Amended	69	2	
115C-106.1	Added	69	2	
115C-106.2	Added	69	2	
115C-106.3	Added	69	2	
115C-107	Repealed	69	1	
115C-107.1	Added	69	2	
115C-107.2	Added	69	2	
115C-107.3	Added	69	2	
115C-107.4	Added	69	2	
115C-107.5	Added	69	2	
115C-107.6	Added	69	2	
115C-107.7	Added	69	2	
115C-108	Repealed	69	1	
115C-108.1	Added	69	2	
115C-108.2	Added	69	2	
115C-109	Repealed	69	1	
115C-109.1	Added	69	2	
115C-109.2	Added	69	2	
115C-109.3	Added	69	2	
115C-109.4	Added	69	2	
115C-109.5	Added	69	2	
115C-109.6	Added	69	2	
115C-109.7	Added	69	2	
115C-109.8	Added	69	2	
115C-109.9	Added	69	2	
115C-110	Repealed	69	1	
115C-110.1	Added	69	2	
115C-110.2	Added	69	2	
115C-110.3	Added	69	2	
115C-111	Repealed	69	1	
115C-111.1	Added	69	2	
115C-111.2	Added	69	2	
115C-111.3	Added	69	2	
115C-111.4	Added	69	2	
115C-111.5	Added	69	2	
115C-111.6	Added	69	2	
115C-112.1	Added	69	2	
115C-113	Repealed	69	1	
115C-113.1	Repealed	69	1	

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115C-114	Repealed	69	1	
115C-115	Repealed	69	1	
115C-116	Repealed	69	1	
115C-121	Repealed	69	1	
115C-122	Repealed	69	1	
115C-139	Repealed	69	1	
115C-140	Repealed	69	1	
115C-140.1	Repealed	69	1	
115C-141	Repealed	69	1	
115C-142	Repealed	69	1	
115C-145	Repealed	69	1	
115C-146.1	Repealed	69	1	
115C-146.2	Repealed	69	1	
115C-146.3	Repealed	69	1	
115C-146.4	Repealed	69	1	
115C-149	Amended	69	3	
115C-233	Amended	69	3	
115C-238.29F	Amended	69	3	
115C-238.29F	Amended	137	2	
115C-238.29H	Amended	69	3	
115C-242	Amended	66	7.18	
115C-242	Amended	69	3	
115C-243	Amended	203	32	7/1/07
115C-247	Amended	208	1	
115C-250	Amended	69	3	
115C-284	Amended	264	56	
115C-290.1	Repealed	264	56	
115C-290.2	Repealed	264	56	
115C-290.5	Amended	203	33	7/1/07
115C-290.5	Repealed	264	56	
115C-290.6	Repealed	264	56	
115C-290.7	Repealed	264	56	
115C-290.8	Repealed	264	56	
115C-290.9	Repealed	264	56	
115C-296.4	Amended	66	9.17	
115C-301.1	Amended	153	3	
115C-363.23A	Amended	66	7.19	
115C-366	Amended	65	1	
115C-366.2	Amended	69	3	
115C-366.2	Repealed	65	2	
115C-367	Amended	69	3	
115C-371	Amended	69	3	
115C-375.1	Amended	264	57	
115C-375.2	Amended	264	57	
115C-375.5	Added	69	4	
115C-391	Amended	69	3	
115C-391.1	Amended	264	58	
115C-397.1	Amended	69	3	
115C-423	Amended	203	34	7/1/07
115C-457.2	Amended	66	6.9	
115C-499.1	Amended	66	9.19	
115C-499.1	Amended	221	5B	
115C-499.1	Amended	259	8	
115C-499.3	Amended	226	22	
115C-499.4	Amended	259	8	
115C-499.4	Amended	264	91	
115C-531	Amended	259	54	
115C-531	Added	232	1	
115C-532	Amended	259	54	

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115C-532	Added	232	1	
115C-546.2	Amended	66	7.15	
115C-546.2	Amended	259	8	
115C-566	Amended	264	59	
115D-2	Amended	203	35	7/1/07
115D-2.1	Amended	31	1	
115D-2.1	Amended	201	2	
115D-4	Amended	203	36	7/1/07
115D-5	Amended	203	37	7/1/07
115D-20	Amended	259	21	
115D-31	Amended	203	38	7/1/07
115D-31.3	Amended	66	8.9	
115D-41	Amended	66	8.11	
115D-41	Amended	221	5	
116-2	Amended	66	9.11	7/1/07
116-2	Amended	203	39	7/1/07
116-4	Amended	66	9.11	7/1/07
116-7	Amended	201	2	
116-11	Amended	66	9.17	
116-11	Amended	95	2.2	
116-11	Amended	203	40	7/1/07
116-12	Amended	66	9.11	7/1/07
116-14	Amended	203	41	7/1/07
116-17	Amended	66	9.11	7/1/07
116-19	Amended	66	9.13	
116-20	Amended	66	9.13	
116-21.1	Amended	66	9.13	
116-21.2	Amended	66	9.13	
116-21.3	Amended	66	9.13	
116-21.4	Amended	66	9.13	
116-22	Amended	66	9.13	
116-30.01	Amended	66	9.17	
116-30.2	Amended	66	9.8	
116-30.2	Amended	66	9.11	7/1/07
116-30.2	Amended	203	42	7/1/07
116-30.3A	Added	203	4	7/1/07
116-30.3	Amended	203	43	7/1/07
116-31	Amended	66	9.11	7/1/07
116-31.11	Amended	217	2	
116-35	Amended	203	43.1	7/1/07
116-36	Amended	203	44	7/1/07
116-36	Amended	203	44.1	7/1/07
116-36.1	Amended	203	45	7/1/07
116-36.2	Amended	203	46	7/1/07
116-36.4	Amended	203	46.1	7/1/07
116-36.5	Amended	203	47	7/1/07
116-36.6	Amended	203	47.1	7/1/07
116-37	Amended	203	47.2	7/1/07
116-40.22	Amended	66	9.11	7/1/07
116-40.22	Amended	203	4.1	7/1/07
116-41.4	Amended	203	48	7/1/07
116-41.9	Amended	203	49	7/1/07
116-41.16	Amended	203	50	7/1/07
116-43.15	Added	66	8.11	
116-43.15	Added	221	5	
116-44.4	Amended	203	51	7/1/07
116-68	Amended	203	51.1	7/1/07
116-69.1	Added	137	3	
116-74.6	Amended	66	9.15	

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116-74.7	Amended	66	9.15	
116-74.41	Amended	203	51.2	7/1/07
116-74.42	Amended	66	9.16	
116-143	Amended	66	9.11	7/1/07
116-143	Amended	66	9.12	
116-175.1	Repealed	203	52	7/1/07
116-187.1	Repealed	203	53	7/1/07
116-209.19	Amended	203	54	7/1/07
116-209.35	Amended	95	2.3	
116-209.36	Amended	95	2.4	
116-209.38	Amended	95	2.5	
116-224	Added	203	54.1	7/1/07
116-230.1	Amended	66	9.11	7/1/07
116-231	Amended	66	9.11	7/1/07
116-232	Amended	66	9.11	7/1/07
116-233	Amended	66	9.11	7/1/07
116-234	Amended	66	9.11	7/1/07
116-235	Amended	66	9.11	7/1/07
116-235	Amended	137	5	
116-236	Repealed	66	9.11	7/1/07
116-237	Repealed	66	9.11	7/1/07
116-238	Amended	203	55	7/1/07
116-238	Repealed	66	9.11	
116-238.5	Added	203	55.1	7/1/07
116D-11	Amended	203	56	7/1/07
116D-46	Amended	203	57	7/1/07
117-3.1	Amended	203	58	7/1/07
119-18	Amended	162	15	
120-4.21	Amended	226	23	
120-4.22A	Amended	66	22.18	
120-32	Amended	203	59	7/1/07
120-32.1	Amended	264	60	
120-32.6	Added	201	3	
120-36.2	Amended	259	22	
120-36.6	Amended	203	60	7/1/07
120-37	Amended	66	22.8	
120-37	Amended	66	22.9	
120-37	Amended	203	61	7/1/07
120-47.1	Repealed	201	17	
120-47.2	Repealed	201	17	
120-47.3	Repealed	201	17	
120-47.4	Repealed	201	17	
120-47.5	Repealed	201	17	
120-47.5A	Repealed	201	17	
120-47.6	Repealed	201	17	
120-47.7	Repealed	201	17	
120-47.7A	Repealed	201	17	
120-47.7B	Amended	264	99.4	
120-47.7B	Repealed	201	16	
120-47.7B	Repealed	201	17	
120-47.7C	Repealed	201	17	
120-47.8	Repealed	201	17	
120-47.8A	Repealed	201	17	
120-47.9	Repealed	201	17	
120-47.10	Repealed	201	17	
120-47.11	Repealed	201	17	
120-47.12	Repealed	201	17	
120-70.44	Amended	255	3.1	
120-70.63	Amended	255	3.2	

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120-70.106	Amended	151	21	
120-70.120	Amended	248	9.2	
120-76	Amended	203	62	7/1/07
120-85	Repealed	201	4	
120-85.1	Added	201	5	
120-86	Amended	201	6	
120-86.1	Amended	201	20	
120-87	Amended	201	4	
120-88	Repealed	201	4	
120-89	Repealed	201	4	
120-92	Repealed	201	4	
120-92.1	Repealed	201	4	
120-93	Repealed	201	4	
120-93.1	Repealed	201	4	
120-94	Repealed	201	4	
120-96	Repealed	201	4	
120-98	Repealed	201	4	
120-99	Amended	201	7	
120-99	Amended	201	8	
120-101	Amended	201	9	
120-102	Amended	201	10	
120-103	Repealed	201	11	
120-103.1	Added	201	12	
120-104	Amended	201	13	
120-105	Amended	201	14	
120-129	Amended	264	29	
120-161	Amended	264	29	
120-204	Repealed	32	2	
120-205	Repealed	32	2	
120-206	Repealed	32	2	
120-207	Repealed	32	2	
120-231	Amended	264	10	
120-244	Added	32	1	
120-259	Amended	203	63	7/1/07
120-275	Added	261	5	
120-276	Added	261	5	
120-277	Added	261	5	
120-278	Added	261	5	
120-279	Added	261	5	
120C-100	Added	201	18	
120C-101	Added	201	18	
120C-102	Added	201	18	
120C-103	Added	201	18	
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120C-200	Added	201	18	
120C-201	Added	201	18	
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120C-216	Added	201	18	
120C-220	Added	201	18	
120C-300	Added	201	18	
120C-301	Added	201	18	
120C-302	Added	201	18	
120C-303	Added	201	18	
120C-304	Added	201	18	
120C-305	Added	201	18	

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120C-400	Added	201	18	
120C-401	Added	201	18	
120C-402	Added	201	18	
120C-403	Added	201	18	
120C-404	Added	201	18	
120C-405	Added	201	18	
120C-500	Added	201	18	
120C-501	Added	201	18	
120C-600	Amended	259	43.5	
120C-600	Added	201	18	
120C-601	Amended	259	43.5	
120C-601	Added	201	18	
120C-602	Amended	259	43.5	
120C-602	Added	201	18	
120C-603	Amended	259	43.5	
120C-603	Added	201	18	
120C-700	Added	201	18	
120C-800	Added	201	18	
121-9	Amended	203	64	7/1/07
121-12.1	Amended	203	65	7/1/07
121-21.1	Amended	180	1	
122A-8.1	Amended	203	66	7/1/07
122A-16	Amended	203	67	7/1/07
122C-3	Amended	69	3	
122C-3	Amended	142	4	
122C-23	Amended	66	10.23	
122C-102	Amended	142	2	
122C-111	Amended	142	4	
122C-112.1	Amended	142	4	
122C-115	Amended	66	10.32	7/1/07
122C-115	Amended	66	10.32	7/1/07
122C-115.1	Amended	66	10.32	7/1/07
122C-115.1	Amended	142	4	
122C-115.1	Amended	142	4	
122C-115.2	Amended	142	4	
122C-115.4	Added	142	4	
122C-117	Amended	142	3	
122C-118.1	Amended	142	4	
122C-120.1	Added	142	4	
122C-121	Amended	142	4	
122C-141	Amended	142	4	
122C-142	Amended	142	1	
122C-142	Amended	259	23	
122C-170	Added	142	5	
122C-170	Added	142	5	
122C-171	Added	142	5	
122C-185	Amended	203	68	7/1/07
122C-270	Amended	264	61	
122C-289	Amended	264	61	
126-5	Amended	66	9.11	7/1/07
126-5	Amended	66	9.17	
126-5	Amended	66	18.2	
126-5	Amended	204	2	
126-5	Amended	221	20	
126-5	Amended	259	49	
126-5	Amended	264	11	
126-7.1	Amended	259	23.1	
126-8.1	Amended	203	69	7/1/07
126-8.5	Amended	203	6	7/1/07

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126-14.4	Amended	264	12	
126-15.1	Amended	264	13	
127A-40	Amended	66	22.20	
128-1.1	Amended	259	24	
128-26	Amended	29	1	
128-28	Amended	64	1.1	
128-28	Amended	64	1.2	
130A-4	Amended	202	5	
130A-4	Amended	255	13.1	
130A-5	Amended	66	10.20	
130A-12	Amended	255	13.2	
130A-17	Amended	255	13.3	
130A-18	Amended	255	13.4	
130A-19	Amended	255	13.5	
130A-20	Amended	255	13.6	
130A-21	Amended	80	1	
130A-39	Amended	202	6	
130A-55	Amended	214	1	
130A-291.1	Amended	255	5.1	
130A-294	Amended	256	1	
130A-294	Amended	256	2	
130A-294	Amended	256	3	
130A-295.02	Amended	79	16	
130A-309.10	Amended	226	24	
130A-309.10	Amended	264	98.5	
130A-309.10	Amended	264	98.5	
130A-310.31	Amended	71	1	
130A-310.31	Amended	71	2	
130A-310.31	Amended	71	3	
130A-310.34	Amended	71	4	
130A-310.34	Amended	71	5	
130A-310.37	Amended	71	6	
130A-310.50	Amended	255	5	
130A-310.52	Amended	255	5	
130A-310.53	Amended	255	5	
130A-310.54	Amended	255	5	
130A-310.55	Amended	255	5	
130A-317	Amended	238	1	
130A-328	Amended	66	11.7	
130A-335.1	Amended	255	4	
130A-335.1	Amended	264	63	
130A-389	Amended	226	32	
130A-398	Amended	226	32	
130A-404	Amended	226	32	
130A-440	Amended	240	1	
130A-440.1	Amended	240	1	
130A-470	Amended	203	70	7/1/07
130A-480	Amended	264	64	
130A-481	Added	80	2	
131A-19	Amended	203	71	7/1/07
131D-21.2	Amended	264	65	
131E-14.2	Amended	264	64	
131E-87	Amended	144	9	
131E-95	Amended	144	3.2	
131E-154.12	Added	104	1	
131E-154.13	Added	104	1	
131E-154.14	Added	104	1	
131E-267	Amended	66	10.22	
132-1.4	Amended	184	7	

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132-1.10	Amended	173	1	
132-1.10	Amended	173	2	
132-1.10	Amended	173	3	
132-1.10	Amended	173	4	
132-1.10	Amended	173	5	
132-1.10	Amended	173	6	
132-1.10	Amended	173	7	
135-1.1	Amended	203	72	7/1/07
135-3	Amended	226	25	6/30/07
135-4.1	Amended	264	14	
135-4A	Amended	264	14	
135-5	Amended	66	22.18	
135-5	Amended	172	1	
135-5.1	Amended	172	2	
135-5.1	Amended	172	3	
135-8	Amended	203	73	7/1/07
135-39.5	Amended	249	4	
135-39.5B	Amended	249	4	
135-40.2	Amended	174	1	
135-40.2	Amended	174	2	
135-40.2	Amended	174	3	
135-40.5	Amended	249	2	
135-40.6A	Amended	249	2	
135-40.13A	Amended	264	66	
135-65	Amended	66	22.18	
135-101	Amended	74	1	
135-101	Amended	74	2	8/1/07
135-106	Amended	74	3	
136-12	Amended	203	74	7/1/07
136-18	Amended	230	1	
136-28.1	Amended	68	1	
136-28.1	Amended	203	75	7/1/07
136-28.4	Amended	261	4	
136-28.14	Added	261	1	
136-44.2A	Amended	258	1	
136-44.5	Amended	258	1	
136-44.5	Amended	258	2	7/1/07
136-44.37	Amended	203	76	7/1/07
136-44.38	Amended	203	77	7/1/07
136-44.50	Amended	237	1	
136-66.8	Added	135	3	
136-89.159	Repealed	228	1	
136-89.160	Repealed	228	1	
136-89.161	Repealed	228	1	
136-89.162	Repealed	228	1	
136-89.163	Repealed	228	1	
136-89.164	Repealed	228	1	
136-89.165	Repealed	228	1	
136-89.166	Repealed	228	1	
136-89.167	Repealed	228	1	
136-89.171	Repealed	228	2	
136-89.172	Repealed	228	2	
136-89.183	Amended	228	5	
136-89.183	Amended	230	1	
136-89.187	Amended	228	3	
136-89.188	Amended	228	4	
136-89.194	Amended	228	6	
136-176	Amended	203	78	7/1/07
136-182	Amended	258	1	

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136-182	Amended	258	3	
136-182	Amended	258	4	7/1/07
138-4	Amended	203	79	7/1/07
139-4	Amended	78	3	
138A-1	Added	201	1	
138A-2	Added	201	1	
138A-3	Added	201	1	
138A-4	Added	201	1	
138A-5	Added	201	1	
138A-6	Added	201	1	
138A-7	Added	201	1	
138A-8	Added	201	1	
138A-9	Added	201	1	
138A-10	Added	201	1	
138A-11	Added	201	1	
138A-12	Added	201	1	
138A-13	Added	201	1	
138A-14	Added	201	1	
138A-15	Added	201	1	
138A-16	Added	201	1	
138A-21	Added	201	1	
138A-22	Added	201	1	
138A-23	Added	201	1	
138A-24	Added	201	1	
138A-25	Added	201	1	
138A-26	Added	201	1	
138A-27	Added	201	1	
138A-28	Added	201	1	
138A-31	Added	201	1	
138A-32	Added	201	1	
138A-33	Added	201	1	
138A-34	Added	201	1	
138A-35	Added	201	1	
138A-36	Added	201	1	
138A-37	Added	201	1	
138A-38	Added	201	1	
138A-39	Added	201	1	
138A-40	Added	201	1	
138A-41	Added	201	1	
138A-45	Added	201	1	
139-8	Amended	78	4	
140-5.13	Amended	66	22.22	
140-5.13	Amended	221	23	
140-5.15	Amended	66	22.22	
140-5.15	Amended	221	23	
140-9	Amended	203	80	7/1/07
140-12	Amended	66	22.22	
140-12	Amended	203	81	7/1/07
140-12	Amended	221	23	
140-13	Amended	66	22.22	
140-13	Amended	221	23	
140-14	Amended	66	22.22	
140-14	Amended	221	23	
142-63	Amended	190	6	
142-64	Amended	190	7	
143-1	Repealed	203	1	7/1/07
143-2	Repealed	203	1	7/1/07
143-3	Repealed	203	1	7/1/07
143-3.1	Repealed	203	1	7/1/07

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143-3.2	Repealed	203	1	7/1/07
143-3.3	Amended	264	67	
143-3.3	Repealed	203	1	7/1/07
143-3.4	Repealed	203	1	7/1/07
143-3.5	Repealed	203	1	7/1/07
143-4	Repealed	203	1	7/1/07
143-4.1	Repealed	203	1	7/1/07
143-5	Repealed	203	1	7/1/07
143-6	Repealed	203	1	7/1/07
143-6.2	Repealed	203	1	7/1/07
143-7	Repealed	203	1	7/1/07
143-8	Repealed	203	1	7/1/07
143-9	Repealed	203	1	7/1/07
143-10	Repealed	203	1	7/1/07
143-10.1A	Repealed	203	1	7/1/07
143-10.2	Repealed	203	1	7/1/07
143-10.7	Repealed	203	1	7/1/07
143-11	Amended	66	6.10	
143-11	Repealed	203	1	7/1/07
143-12	Repealed	203	1	7/1/07
143-12.1	Repealed	203	1	7/1/07
143-13	Repealed	203	1	7/1/07
143-14	Repealed	203	1	7/1/07
143-15	Repealed	203	1	7/1/07
143-15.1	Repealed	203	1	7/1/07
143-15.2	Repealed	203	1	7/1/07
143-15.3	Repealed	203	1	7/1/07
143-15.4	Repealed	203	1	7/1/07
143-15.3A	Repealed	203	1	7/1/07
143-15.3B	Repealed	203	5	7/1/07
143-15.3C	Repealed	203	1	7/1/07
143-15.3D	Amended	66	10.33H	
143-15.3D	Repealed	203	1	7/1/07
143-15.3E	Repealed	203	1	7/1/07
143-16	Repealed	203	1	7/1/07
143-16.1	Repealed	203	1	7/1/07
143-16.2	Repealed	203	1	7/1/07
143-16.3	Amended	66	6.17	
143-16.3	Amended	221	2	
143-16.3	Repealed	203	1	7/1/07
143-16.4	Repealed	203	1	7/1/07
143-16.6	Repealed	203	1	7/1/07
143-16.7	Added	66	6.4	
143-17	Repealed	203	1	7/1/07
143-18	Repealed	203	1	7/1/07
143-18.1	Repealed	203	1	7/1/07
143-19	Repealed	203	1	7/1/07
143-20	Repealed	203	1	7/1/07
143-20.1	Repealed	203	1	7/1/07
143-21	Repealed	203	1	7/1/07
143-22	Repealed	203	1	7/1/07
143-23	Repealed	203	1	7/1/07
143-23.2	Repealed	203	1	7/1/07
143-23.3	Repealed	203	1	7/1/07
143-24	Repealed	203	1	7/1/07
143-25	Repealed	203	1	7/1/07
143-26	Repealed	203	1	7/1/07
143-27	Repealed	203	1	7/1/07
143-27.2	Repealed	203	6	7/1/07

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143-28	Repealed	203	1	7/1/07
143-28.1	Repealed	203	1	7/1/07
143-29	Repealed	203	1	7/1/07
143-30	Repealed	203	1	7/1/07
143-31	Repealed	203	1	7/1/07
143-31.1	Amended	217	1	
143-31.1	Repealed	203	1	7/1/07
143-31.2	Repealed	203	7	7/1/07
143-31.3	Repealed	203	1	7/1/07
143-31.4	Repealed	203	1	7/1/07
143-31.5	Repealed	203	1	7/1/07
143-32	Repealed	203	1	7/1/07
143-33	Repealed	203	1	7/1/07
143-34	Repealed	203	1	7/1/07
143-34.1	Repealed	203	1	7/1/07
143-34.2	Repealed	203	1	7/1/07
143-34.6	Repealed	203	1	7/1/07
143-34.7	Repealed	203	1	7/1/07
143-34.40	Repealed	203	2	7/1/07
143-34.41	Repealed	203	2	7/1/07
143-34.42	Repealed	203	2	7/1/07
143-34.43	Repealed	203	2	7/1/07
143-34.44	Repealed	203	2	7/1/07
143-34.45	Repealed	203	2	7/1/07
143-49	Amended	203	82	7/1/07
143-52	Amended	203	83	7/1/07
143-53	Amended	203	84	7/1/07
143-55	Amended	264	59	
143-60	Amended	203	85	7/1/07
143-63	Amended	203	86	7/1/07
143-64.05	Amended	231	3	
143-64.10	Amended	190	1	
143-64.10	Amended	190	8	
143-64.11	Amended	190	9	
143-64.11	Amended	190	10	
143-64.11	Amended	190	11	
143-64.12	Amended	190	12	
143-64.15	Amended	190	13	
143-64.17	Amended	190	2	
143-64.17B	Amended	190	3	
143-64.17G	Amended	190	4	
143-64.17H	Amended	190	5	
143-64.24	Amended	95	2.1	
143-64.24	Amended	264	29	
143-64.31	Amended	210	1	
143-129	Amended	232	2	
143-135.27	Amended	203	87	7/1/07
143-143.21A	Amended	259	24.5	
143-151.9	Amended	264	29	
143-166.30	Amended	141	1	
143-166.50	Amended	141	2	
143-214.4	Amended	203	88	7/1/07
143-214.7	Amended	246	16	
143-215.1	Amended	250	5	
143-215.3D	Amended	250	4	
143-215.6A	Amended	250	6	
143-215.40	Amended	203	89	7/1/07
143-215.73	Amended	203	90	7/1/07
143-215.73A	Amended	203	91	7/1/07

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143-215.74M	Added	78	1	
143-215.107C	Amended	79	13	
143-250	Amended	203	92	7/1/07
143-254.5	Amended	255	11.1	
143-300.8	Amended	202	7	
143-318.14A	Amended	203	93	7/1/07
143-318.15	Amended	203	94	7/1/07
143-318.18	Amended	184	6	
143-318.18	Amended	203	95	7/1/07
143-341	Amended	203	96	7/1/07
143-341	Amended	203	97	7/1/07
143-341	Amended	217	1.1	7/1/07
143-344	Amended	203	98	7/1/07
143-597	Amended	66	9.11	7/1/07
143-597	Amended	76	1	
143-599	Amended	133	1	
143-651	Amended	264	22	
143-654	Amended	264	22	
143-655	Amended	264	22	
143-656	Amended	264	22	
143-717	Amended	264	68	
143-722	Amended	203	99	7/1/07
143A-10	Amended	203	100	7/1/07
143B-10	Amended	203	101	7/1/07
143B-30.1	Amended	221	20	
143B-53	Amended	66	22.22	
143B-53	Amended	221	23	
143B-53.1	Amended	203	7	7/1/07
143B-53.2	Added	204	3	
143B-74.2	Amended	204	1	
143B-89	Amended	66	22.22	
143B-89	Amended	221	23	
143B-131.2	Amended	259	25	
143B-131.10	Amended	203	102	7/1/07
143B-139.2	Amended	203	103	7/1/07
143B-139.4	Amended	66	10.19	
143B-153	Amended	66	10.2	
143B-168.12	Amended	203	104	7/1/07
143B-168.12	Amended	264	1	
143B-179.5	Amended	69	3	
143B-179.6	Amended	69	3	
143B-216.40	Amended	69	3	
143B-216.60	Amended	197	1	
143B-216.72A	Added	206	2	
143B-216.72B	Added	206	2	
143B-216.72C	Added	206	2	
143B-216.75	Amended	240	2	
143B-266	Amended	247	15	
143B-267	Amended	264	89	
143B-279.12	Amended	79	14	
143B-289.52	Amended	255	11.2	
143B-289.52	Amended	255	12	
143B-291	Amended	79	3	
143B-291	Amended	79	4	
143B-292	Amended	79	5	
143B-293	Amended	79	6	
143B-296	Amended	79	7	
143B-297	Amended	79	8	
143B-299	Amended	79	9	

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143B-300	Amended	79	10	
143B-313.2	Amended	203	105	
143B-350	Amended	201	15	
143B-350	Amended	230	1	
143B-350	Amended	264	29	
143B-394.4	Amended	66	17.7	
143B-394.4	Amended	259	33.5	
143B-394.10	Amended	203	106	7/1/07
143B-394.15	Amended	264	29	
143B-405	Amended	264	15	
143B-426.11	Amended	203	107	7/1/07
143B-426.14	Amended	203	108	7/1/07
143B-426.24	Amended	66	20.1	
143B-426.39	Amended	66	6.19	
143B-426.39	Amended	203	8	7/1/07
143B-426.39	Amended	221	3A	
143B-426.39	Amended	259	40	
143B-426.39	Amended	259	40	7/1/07
143B-426.40A	Amended	66	6.19	
143B-426.40A	Amended	221	3A	
143B-426.40A	Amended	259	40	
143B-426.40A	Amended	264	67	
143B-426.40A	Added	203	9	7/1/07
143B-426.40G	Amended	66	6.19	
143B-426.40G	Amended	221	3A	
143B-426.40G	Amended	259	40	
143B-426.40G	Added	203	9	7/1/07
143B-426.40H	Amended	66	6.19	
143B-426.40H	Amended	221	3A	
143B-426.40H	Amended	259	40	
143B-426.40H	Added	203	9	7/1/07
143B-437.01	Amended	252	2.4	
143B-437.04	Amended	252	2.5	
143B-437.08	Added	252	1.2	
143B-437.09	Added	252	1.2	
143B-437.10	Added	252	1.2	
143B-437.51	Amended	168	1.1	
143B-437.51	Amended	252	2.6	
143B-437.51	Amended	264	69	
143B-437.52	Amended	168	1.2	
143B-437.52	Amended	264	69	
143B-437.53	Amended	168	1.3	
143B-437.53	Amended	252	2.7	
143B-437.55	Amended	168	1.4	
143B-437.55	Amended	252	2.8	
143B-437.55	Amended	264	69	
143B-437.56	Amended	168	1.5	
143B-437.56	Amended	252	2.9	
143B-437.56	Amended	264	69	
143B-437.57	Amended	168	1.6	
143B-437.57	Amended	264	69	
143B-437.58	Amended	168	1.7	
143B-437.58	Amended	264	69	
143B-437.59	Amended	168	1.8	
143B-437.60	Amended	168	1.9	
143B-437.61	Amended	168	1.10	
143B-437.62	Amended	168	1.11	
143B-437.71	Amended	162	19	
143B-437.90	Amended	264	98.3	

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143B-437.91	Amended	264	98.3	
143B-454	Amended	203	109	7/1/07
143B-456	Amended	203	110	7/1/07
143B-516	Amended	203	111	7/1/07
143C-1-1	Amended	66	6.19	
143C-1-1	Amended	221	3A	
143C-1-1	Amended	259	40	7/1/07
143C-1-1	Added	203	3	7/1/07
143C-1-2	Added	203	3	7/1/07
143C-1-3	Added	203	3	7/1/07
143C-1-4	Added	203	3	7/1/07
143C-2-1	Added	203	3	7/1/07
143C-2-2	Added	203	3	7/1/07
143C-2-3	Added	203	3	7/1/07
143C-2-4	Added	203	3	7/1/07
143C-3-1	Amended	66	6.19	
143C-3-1	Amended	221	3A	
143C-3-1	Amended	259	40	7/1/07
143C-3-1	Added	203	3	7/1/07
143C-3-2	Added	203	3	7/1/07
143C-3-3	Added	203	3	7/1/07
143C-3-4	Added	203	3	7/1/07
143C-3-5	Added	203	3	7/1/07
143C-4-1	Added	203	3	7/1/07
143C-4-2	Added	203	3	7/1/07
143C-4-3	Added	203	3	7/1/07
143C-4-4	Added	203	3	7/1/07
143C-4-5	Added	203	3	7/1/07
143C-4-6	Added	203	3	7/1/07
143C-4-7	Added	203	3	7/1/07
143C-5-1	Added	203	3	7/1/07
143C-5-2	Added	203	3	7/1/07
143C-5-3	Added	203	3	7/1/07
143C-5-4	Added	203	3	7/1/07
143C-5-5	Added	203	3	7/1/07
143C-6-1	Added	203	3	7/1/07
143C-6-2	Added	203	3	7/1/07
143C-6-3	Added	203	3	7/1/07
143C-6-4	Added	203	3	7/1/07
143C-6-5	Added	203	3	7/1/07
143C-6-6	Added	203	3	7/1/07
143C-6-7	Added	203	3	7/1/07
143C-6-8	Added	203	3	7/1/07
143C-6-9	Added	203	3	7/1/07
143C-6-11	Added	203	3	7/1/07
143C-6-21	Added	203	3	7/1/07
143C-6-22	Added	203	3	7/1/07
143C-6-23	Added	203	3	7/1/07
143C-7-1	Added	203	3	7/1/07
143C-7-2	Added	203	3	7/1/07
143C-8-1	Added	203	3	7/1/07
143C-8-2	Added	203	3	7/1/07
143C-8-3	Added	203	3	7/1/07
143C-8-4	Added	203	3	7/1/07
143C-8-5	Added	203	3	7/1/07
143C-8-6	Added	203	3	7/1/07
143C-8-7	Added	203	3	7/1/07
143C-8-8	Added	203	3	7/1/07
143C-8-9	Added	203	3	7/1/07

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143C-8-10	Added	203	3	7/1/07
143C-8-11	Added	203	3	7/1/07
143C-8-12	Added	203	3	7/1/07
143C-9-1	Added	203	3	7/1/07
143C-9-2	Added	203	3	7/1/07
143C-9-3	Added	203	3	7/1/07
143C-9-4	Added	203	3	7/1/07
143C-9-5	Amended	259	40.5	
143C-9-5	Added	66	6.19	
143C-9-5	Added	221	3A	
143C-9-5	Added	259	40	7/1/07
143C-9-6	Amended	259	40.5	
143C-9-6	Added	66	6.19	
143C-9-6	Added	221	3A	7/1/07
143C-9-6	Added	259	40	7/1/07
143C-10-1	Added	203	3	7/1/07
143C-10-1	Added	203	3	7/1/07
143C-10-2	Added	203	3	7/1/07
143C-10-3	Added	203	3	7/1/07
145-23	Amended	264	70	
146-22.3	Amended	252	2.14	
146-22.4	Amended	252	2.15	
146-22.5	Amended	252	2.16	
147-9.3	Amended	66	6.19	
147-9.3	Amended	203	112	7/1/07
147-9.3	Amended	221	3A	
147-9.3	Amended	259	40	
147-9.4	Amended	66	6.19	
147-9.4	Amended	203	113	7/1/07
147-9.4	Amended	221	3A	
147-9.4	Amended	259	40	
147-11	Amended	66	22.1	
147-12	Amended	6	6	
147-12	Amended	79	15	
147-12	Amended	203	114	7/1/07
147-12	Amended	259	33	
147-33.72F	Amended	264	71	
147-33.97	Amended	264	72	
147-36	Amended	203	115	7/1/07
147-54	Amended	264	29	
147-54.7A	Repealed	201	19	
147-54.31	Repealed	201	19	
147-54.32	Repealed	201	19	
147-54.33	Repealed	201	19	
147-54.34	Repealed	201	19	
147-54.35	Repealed	201	19	
147-54.36	Repealed	201	19	
147-54.37	Repealed	201	19	
147-54.38	Repealed	201	19	
147-54.39	Amended	264	99.4	
147-54.39	Repealed	201	19	
147-54.40	Repealed	201	19	
147-54.41	Amended	264	99.4	
147-54.41	Repealed	201	19	
147-54.42	Repealed	201	19	
147-54.43	Repealed	201	19	
147-54.44	Repealed	201	19	
147-64.7	Amended	203	116	7/1/07
147-64.11	Amended	203	117	7/1/07

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147-68	Amended	203	118	7/1/07
147-69.3	Amended	203	119	7/1/07
147-86.10	Amended	203	120	7/1/07
147-86.11	Amended	203	121	7/1/07
147-86.30	Amended	203	122	7/1/07
147-86.35	Amended	203	123	7/1/07
150B-1	Amended	66	8.10	
150B-1	Amended	66	12.8	
150B-1	Amended	201	2	
150B-21.4	Amended	203	124	7/1/07
150B-21.17	Amended	66	18.1	
150B-22.1	Added	69	5	
153A-15.1	Amended	252	2.17	
153A-129	Amended	264	16	
153A-137	Repealed	151	10	
153A-154	Repealed	151	11	
153A-155	Amended	120	8.1	
153A-155	Amended	127	2	
153A-155	Amended	129	2	
153A-155	Amended	162	20	
153A-155	Amended	167	7	
153A-155	Amended	264	81	
153A-212.2	Added	181	1	
153A-215	Amended	128	6	
153A-340	Amended	259	26	
153A-376	Amended	259	27	
153A-395	Amended	211	2	
153A-453	Added	142	3	
153A-454	Added	246	17	
157-29	Amended	219	1	
157-29	Amended	259	39	
158-7.3	Amended	211	3	
158-7.3	Amended	252	2.10	
158-8.5	Added	263	1	
158-8.6	Added	263	1	
158-8.7	Added	263	1	
158-8.8	Added	263	1	
158-33	Amended	226	26	
158-33	Amended	264	76.8	
159-7	Amended	203	125	7/1/07
159-83	Amended	224	3	
159-83	Amended	259	47	
160A-37	Amended	264	17	
160A-37.3	Amended	193	1	
160A-49	Amended	162	21	
160A-49	Amended	264	18	
160A-49.3	Amended	193	2	
160A-49.3	Amended	259	53	
160A-58.1	Amended	62	1	
160A-58.1	Amended	122	1	
160A-58.1	Amended	130	1	
160A-211	Amended	151	12	
160A-214	Repealed	151	13	
160A-215	Amended	118	4	
160A-215	Amended	120	8.2	
160A-215	Amended	148	3	
160A-215	Amended	162	20	
160A-215	Amended	164	3	
160A-215	Amended	167	3	

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160A-215	Amended	264	19	
160A-215	Amended	264	81	
160A-270	Amended	264	74	
160A-288	Amended	159	4	
160A-288.2	Amended	159	5	
160A-289.2	Added	181	2	
160A-296	Amended	151	14	
160A-303	Amended	166	2	
160A-303	Amended	171	1	
160A-303.2	Amended	166	2	
160A-303.2	Amended	171	1	
160A-319	Amended	151	15	
160A-324	Amended	193	3	
160A-327	Added	193	4	
160A-383	Amended	259	28	
160A-425.1	Amended	116	3	
160A-425.1	Amended	252	2.18	
160A-426	Amended	252	2.19	
160A-456	Amended	259	27	
160A-459	Added	246	17	
160A-475	Amended	211	1	
160A-503	Amended	224	2.1	
160A-503	Amended	224	2.2	
160A-503	Amended	259	47	
160A-512	Amended	224	2.3	
160A-512	Amended	259	47	
160A-515	Amended	224	2.4	
160A-515	Amended	259	47	
160A-515.1	Amended	211	4	
160A-537	Amended	162	25	
161-31	Amended	16	1	
161-31	Amended	150	1	
162A-5	Amended	226	29	
162A-87.1B	Amended	226	29	
163-19	Amended	262	4.2	
163-57	Amended	262	2.1	
163-82.15	Amended	262	2	
163-82.28	Amended	264	76	
163-87	Amended	262	3	
163-90.2	Amended	262	3	
163-96	Amended	234	1	
163-97	Amended	234	2	
163-98	Amended	234	3	
163-106	Amended	155	2	
163-111	Amended	192	2	
163-114	Amended	234	6	
163-122	Amended	155	3	
163-122	Amended	234	4	
163-122	Amended	234	5	
163-123	Amended	155	4	
163-127.1	Amended	259	48	
163-127.1	Added	155	1	
163-127.2	Added	155	1	
163-127.3	Added	155	1	
163-127.4	Added	155	1	
163-127.5	Added	155	1	
163-127.6	Added	155	1	
163-128	Amended	264	20	
163-132.1B	Added	264	75.5	

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163-132.1	Amended	264	75.5	
163-165	Amended	262	4	
163-165.7	Amended	264	76	
163-182.1	Amended	192	7	
163-182.1	Amended	264	76	
163-182.2	Amended	192	7	
163-182.2	Amended	264	76	
163-234	Amended	262	1	
163-245	Amended	192	6	
163-278.6	Amended	264	23	
163-278.7	Amended	195	7	
163-278.8	Amended	161	2	
163-278.8	Amended	161	3	
163-278.8	Amended	195	4	
163-278.9	Amended	195	5.1	
163-278.9	Amended	195	8	
163-278.11	Amended	161	4	
163-278.11	Amended	195	5	
163-278.13	Amended	192	15	
163-278.13	Amended	192	16	
163-278.13	Amended	192	17	
163-278.13B	Amended	201	21	
163-278.14	Amended	195	1	
163-278.14	Amended	195	5.2	
163-278.15	Amended	195	6	
163-278.15	Amended	262	4.1	
163-278.16B	Added	161	1	
163-278.19	Amended	195	3	
163-278.19	Amended	262	4.1	
163-278.19	Amended	262	4.3	
163-278.20	Repealed	195	2	
163-278.27	Amended	161	5	
163-278.63	Amended	192	14.1	
163-278.64A	Added	192	10	
163-278.65	Amended	192	11	
163-278.66	Amended	192	12	
163-278.68	Amended	192	13	
163-278.69	Amended	192	14	
163-278.80	Amended	182	1	
163-278.81	Amended	182	2	
163-278.82	Amended	182	3	
163-278.83	Amended	259	29	
163-278.90	Amended	182	1	
163-278.91	Amended	182	2	
163-278.92	Amended	182	3	
163-278.93	Amended	259	29	
163-278.100	Amended	259	29	
163-278.100	Added	233	1	
163-278.101	Added	233	1	
163-278.102	Amended	259	29	
163-278.102	Added	233	1	
163-278.110	Added	233	2	
163-278.110	Added	233	2	
163-278.111	Added	233	2	
163-278.112	Amended	259	29	
163-278.112	Added	233	2	
163-279	Amended	192	3	
163-291	Amended	192	4	
163-294.2	Amended	192	5	

G.S.		*Session Laws*		*Postponed Effective*
§	*Effect*	*Chapter*	*Section*	*Date*
163-295	Amended	155	5	
163-296	Amended	264	21	
163-327	Repealed	192	9	
163-327.1	Amended	192	8	
163-328	Amended	192	9	
163-329	Amended	192	8	
166A-4	Amended	66	6.5	
166A-6.01	Amended	66	6.5	
166A-6.02	Added	66	6.5	
166A-14	Amended	81	1	

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